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Agencies in the Netherlands

Introduction

In this contribution we will focus on the phenomenon of 'agencies' in the Netherlands, more specifically under Dutch law. Over the past few years a lot has been published about agencies (hereinafter: independent agencies), especially about independent administrative authorities. The authors of this contribution too have taken part in this stream of publications. The opinions we advanced in such publications are, we think, still viable. For that reason, some prior publications will be referred to quite regularly hereinafter.[1]

In this contribution we will stick to the outline provided by the editors as closely as possible. In some instances, however, we will deviate from it. Thus, for instance, we consider it useful to start with a further definition of the subject of this study.

0. Subject of study

Dutch discussions on independent agencies are often characterised by a babel of references; so, for instance, reference is made to internal independence and external independence, to independent agencies and 'autonomous' agencies, to independent administrative authorities, to legal entities with legislative tasks, which are in turn divided into public law legal entities and private law legal entities, et cetera.

1 These include specifically: H.R.B.M. Kummeling/A.P.W. Duijkersloot/G.D. Minderman/J.A. van Schagen/S.E. Zijlstra, *Verkenningen van verantwoordelijkheid, Ministeriële verantwoordelijkheid voor het toezicht op de financiën van zelfstandige instellingen op het terrein van onderwijs en onderzoek*, Deventer: W.E.J. Tjeenk Willink 1999; H.R.B.M. Kummeling, *Een kale kaderwet, preadvies voor de Vereniging voor wetgeving en wetgevingsbeleid*, Kluwer: Deventer 2001 en A.P.W. Duijkersloot/F.C.M.A. Michiels, *Taken en bevoegdheden van onafhankelijke toezichthouders: mogelijkheden en beperkingen*, in: H.J. de Ru en J.A.F. Peters (red.), *Toezicht en regulering van nieuwe markten, Opstellen over de juridische aspecten van regulering*, Den Haag: Sdu Uitgevers 2000.

Below we will list the most important differences and take a closer look at what these entail.

a Internal and external independence

In order to make certain administrative authorities function more efficiently, more effectively, a number of so-called internal privatization processes have been initiated over the past few years. These have resulted in, among other things, the phenomenon of *agentschap* (independent management units). This agency is especially important from the point of view of financial accountability and as been regulated in the *Comptabiliteitswet* (Governments Accounts Act). Financial accountability of an agency is based on a benefit/cost system. As the idea of such an agency is that the administrative authority concerned will become more efficient and effective, special requirements apply as regards product information included in budget and account.

Despite their separate account and the fact that they submit individual annual reports to the Second Chamber, these agencies are integral parts of the respective ministries and are thus fully covered by ministerial responsibility. Ministerial competences remain intact; the minister can impose both general and specific directions on such agencies. From a point of view of ministerial responsibility, therefore, there is no independence.

In case of true external independence we find agencies that are no longer fully controlled by the minister, that is to say, the minister no longer has complete authority in imposing on these agencies all the directions he deems necessary.

The degree of autonomy and independence, however, varies widely from one agency to another. Independence starts where ministerial authority stops and may also differ per activity within the agency, for example little independence as regards financial authority and substantial independence as regards all sorts of core activities such as education and research, didactic methods, issuing orders. This shows that independence and the equivalent autonomy are no either/or matters. An agency is usually only independent as regards certain aspects of its functioning.

As the editors have asked us to specifically focus on independent agencies, hereafter our attention will be solely on those (external independence).

b (Independent) Administrative Authorities (IAAs)

There are substantial legal differences between the various forms of independent agencies. The most important ones relate to the question whether or not the independent agency is an administrative authority and to the question whether or not they have legal personality and if so, whether this is of a public law or private law origin. The *Aanwijzingen voor de regelgeving* (Directives for Drafting Regulation) define the concept of IAA in direction 124a:

> By independent administrative authority we mean: an administrative authority at central government level, which is not hierarchically subordinated to a minister and which is not an advisory college as meant in the Kaderwet adviescolleges (Framework Act on Advisory Colleges), of which the main task is to give advice.

The meaning of the concept of administrative agency is defined by the General Administrative Act (Awb).[2]

Article 1:1, first paragraph, Awb
'Administrative authority' means:
a. an organ of a legal entity which has been established under public law, or
b. another entity or body vested with any form of public authority.'[3]

Regarding the question whether or not an agency is an agency of a legal entity established under public law (article 1:1, first paragraph, under a, Awb), the extent and content of the agency's tasks are of no importance: 'primarily the public law basis determines whether or not a certain agency is an administrative authority. Therefore, an agency that has as its sole task to perform certain specific tasks but which has a public law basis, is in effect an administrative authority.'[4] The most important categories of such administrative authorities are the Crown and ministers (organs of State), Provincial councils, deputy councils and Queen's councils (provincial organs) as well as municipal councils, mayor and councillors and the mayor (municipal organs); other examples include advisory councils (e.g. the Council for public authority), the tax inspector and the Dutch Unfair Competition Board as organs of State.

However, in case of an agency of a private law legal entity or a natural entity, it may only be considered an administrative authority if it has public authority, that is to say 'the public law competence to decide on the legal position (the rights and/or obligations) of other legal subjects[5] (also: the competence to perform public law legal actions).[6] Examples include: De Nederlandsche Bank NV, Stichting Pensioen- en Verzekeringskamer and the APK-keuringsstations.

Characteristic of IAAs is that they are not hierarchically subordinate to a minister. An administrative authority is hierarchically subordinate to a minister to the extent that the minister may in any occurring case statutorily decree how the authority should act. A point of reference in this context is the so-called special instructive competence: the competence to give directions in individual cases (also called instruc-

2 On this subject see extensively Marion Bense and Sjoerd Zijlstra, Het begrip bestuursorgaan, Nederlands Tijdschrift voor Bestuursrecht 1994 no. 9 en S.E. Zijlstra, Zelfstandige bestuursorganen in een democratische rechtsstaat (diss.). Den Haag 1997 p. 9-24.

3 The second paragraph determines that some specifically mentioned agencies are not be considered administrative authorities. These (the legislature, the Houses of Parliament, the General Chamber of Audit, the State Council, the National Ombudsman and the judiciary) will further be outside the scope of this contribution.

4 Memorandum of reply, *Kamerstukken II* 1990/91, 21 221, no. 5, p. 32; PG Awb I, p. 136.

5 *Kamerstukken II* 1988/89, 21 221 no. 3 p. 27; PG Awb I p. 133.

6 '*Met enig openbaar gezag bekleed betekent [...] dat de bevoegdheid bestaat om eenzijdig de rechtspositie van burgers te bepalen, bijvoorbeeld door het nemen van besluiten, met name beschikkingen. Dat betekent dan, dat als aan organen van privaatrechtelijke rechtsentityen de bevoegdheid is gegeven om beschikkingen te nemen, er dan ook sprake is van een bestuursorgaan.*' Handelingen UCV 1991/92 no. 17 p. 43; PG Awb I p. 144-145.

tions). This competence can legally occur in one of three instances, civil service hierarchy subordination, mandate relations and directive competence for individual cases, pursuant to a specific act.[7]

c Legal entities with statutory tasks

In its report *Toezicht op uitvoering van publieke taken* (Supervision of performance public tasks, 1998) the *Algemene Rekenkamer* (General Chamber of Audit) with reference to Article 59, first paragraph, under d, *Comptabiliteitswet* uses the concept of `Legal entity with statutory tasks' (LEwST).[8] In said article these are described as follows:

> '... legal entities in as far as they have tasks pursuant to law and are entirely or in part financed from the proceeds of charges imposed pursuant to law'.

The concepts of IAA and LEwST partly overlap. The concept of LewST is wider than the concept of IAA in that it also covers private law legal entities which do not have public authority but are financed with legally imposed charges (e.g. the National museums). However, on the other hand it is more limited because IAAs without individual legal personality (such as the Electoral Council) are not considered.

The General Chamber of Audit only concerns itself with LEwSTs because it only has control competencies regarding LEwSTs. See below, paragraphs 6 and 8.

d (Public and Private Law) Legal Entities

As is implicitly obvious from the above, IAAs can also be (independent) legal entities and often are, such as *Informatie BeheerGroep* (IBG), but not necessarily. For instance, the Electoral Council and the General Chamber of Registration are IAAs but not independent legal entities. They are part of the legal entity of the State.

Among LEwSTs we can distinguish legal entities with a public law structure and those with a private law structure. For the first category, also called *public law legal entities*, the internal organisation and division of authority is (largely) based on public law. They are individually awarded legal personality pursuant to a statutory act (see article 2:1 CC).[9] *Private law LEwSTs* are structured according to the Civil Code as regards internal organisation, including the internal division of authority.The very same CC subsequently awards them legal personality.

Legal entities are independent as far as assets are concerned. They have their own individual assets which they can spend, but for which they are also themselves accountable. So, should they commit an unlawful act for which they are then accountable, the Minister (the State) cannot be addressed.

7 See about this Zijlstra, *op. cit.* (1997) p. 76-86.

8 Algemene Rekenkamer, *Toezicht op uitvoering publieke taken. Kamerstukken* II 1997/98, 25 956 nos. 1-2, p. 26.

9 More on this matter: J.A.F. Peters, *Publiekrechtelijke rechtspersonen*, Deventer 1997.

In the above we have sketched in rather broad terms a picture of the statutory presentation of independent agencies. For the moment we will assume that in American literature these would all be covered by the common term 'agency'. As will become clear hereafter, this common denominator offers no relief in a Dutch context. The attention of both legislature and jurisprudence has over the past few years focussed almost solely on IAAs, thus most of the time ignoring the other *independent* agencies.

1 Constitutional position and context

1.1 Constitution

The Dutch constitution has no general ruling on independent agencies. The fact that they function nevertheless and even hold legislative powers has everything to do with the open system of the Constitution which allows the legislator to introduce public authorities and administrative forms other than those mentioned in the Constitution. For a certain type of independent agency, however, the Constitution does have a regulation. This concerns the public bodies for the professions and trades and other public boards (other than provinces, municipalities and water boards) pursuant to Article 134 Constitution. Characteristic of this type of independent agency is that they consist of several bodies (civil services complex) and have a common structure comprising a more or less democratically formed body, to which the other administrative bodies within the public agency are accountable. In relative terms this is a very small category.

1.2 Constitutional context and the urge to further regulate independent agencies

The Netherlands have a parliamentary constitution. Acts can only be drafted by government and parliament together (Article 81 Constitution). In all other instances the actions of ministers and secretaries of state come under the supervision of parliament. Politicians are (if so requested) obliged to account for their actions before both Chambers of parliament. The Chambers dispose of several instruments to enforce this accountability. Thus they have a right to information based on Article 68 Constitution. Only an appeal on 'the interests of the State' may absolve a minister from his or her duty to provide information. If a Chamber is not satisfied with the performance of a certain minister it may bring a call for a vote of no confidence to eventually force this minister to step down. Ministerial accountability, the duty to account before the Chambers, is, however, related to a minister's competences. As regards matters in which he has no authority a minister neither can nor needs to give account. In the Dutch context therefore, ministerial accountability and parliamentary (democratic) control become communicating vessels.

The above shows why the existence of independent agencies poses a problem from a democratic control point of view; the ministers' competences as regards *independent* agencies are per definition limited. They do not come under the usual

ministerial hierarchy. The competences of ministers are limited to those granted to them explicitly by law. Ministers only hold limited powers as regards independent agencies. What is remarkable is that these differ per institutional act. This results in another argument for further regulation of independent agencies, namely to improve the clarity and transparency of the governmental organisation.

Finally, it must be noted that especially the General Chamber of Audit has pointed out that there is only limited understanding of the correct and efficient financial management of public monies by independent agencies. From this side too there is constant pressure for further regulation.

1.3 The Directives for drafting regulation and proposals for general (constitutional) legislation as regards independent agencies

As we saw, therefore, the Constitution does not have many regulations regarding independent agencies. The past two decades several attempts have been made, regarding the above indicated issues, to further regulate the functioning of independent agencies. After all, a lot of money is involved here. Some calculations indicate that over the year 2000 the expenses incurred by these agencies exceeded 200 billion Dutch guilders,[10] half of which came from government funds.[11] Another striking matter is that many of these agencies have important executive and sometimes even legislative competences. Both aspects together, combined with the growing irritation of parliament that these agencies are subject to only limited democratic monitoring, have led to multiple pleas from parliament for further regulation of these agencies.

And further regulation has been introduced but only as regards IAAs and for now only in the form of rules with a weak statutory basis. It concerns the Directives for drafting regulation, which were extended in 1996 with rules pertaining to IAAs. Addressees of the Directives are mostly those in government service who are charged with drafting legislation. The Directives have no impact outside this scope.

In 1997 a constitutional amendment was submitted to the Second Chamber, proposing to include stipulations regarding IAAs.[12] The Council of State's advice was fatal and the Second Chamber published a very critical report. Objections primarily targeted the notion to place these central government bodies in Chapter 7 of the Constitution which is currently primarily reserved for decentralised bodies. There were also objections to losing the Constitutional basis for other public organisations and the equalisation of IAAs to public law appeal bodies and branch organisations. The Cabinet subsequently withdrew the bill.[13]

Fall 2000 a bill for a framework act on IAAs was submitted. Perhaps in the future we may expect new attempts to include further regulation regarding IAAs in the

10 Some 90 billion Euro in current currency.

11 G. Minderman, *Tweede Kamer en Rijksfinanciën*, Den Haag: Boom Juridische Uitgevers 2000, p. 177.

12 *Kamerstukken II* 1997/98, 25 629, nos. 1-2.

13 *Kamerstukken II* 1997/98, 25 629, no. 6.

Constitution based on the experiences gained with this ordinary act. However, this is as yet a long way off. The act is as yet only a bill before the First Chamber.[14]

The part on goals as included in the explanatory memorandum raises high expectations. According to the government this bill concerns 'the harmonisation of organisational legislation for IAAs and the regulation of politics' primacy'. More precisely there are four goals. Firstly the bill aims to impose some order on organisational law. The second aim concerns a clear regulation of ministerial accountability. Next the proposed framework act means to clarify the financial supervision of IAAs and finally the proposed framework act is to enhance public insight into the functioning of IAAs.[15] A number of individual stipulations of the framework act will be discussed in more detail below in relation to the various topics.

2 Motives and Goals

IAAs come in various shapes and sizes, also as regards the motives for their institution and their goals. Numerous divisions have been made from various points of view and they overlap partly. Below, we will present two varieties, namely one based on motive for institution and one based on tasks.

2.1 Division according to Motive for institution

In literature, but also in the Directives, three types of IAAs are distinguished.

The first type is based on the fact that the *nature of the competence* concerned is such that it can not or hardly be executed by a body of the 'democratic complex'; this type of IAA is primarily based on considerations of division of powers and of basic rights.

The second motive concerns a *division of policy and implementation* (core tasks), to be traced back to democracy (intensifying democratic monitoring by limitation of 'end station effect') on the one hand and division of powers (administration not its own legislator) on the other hand. This type usually involved the attribution of an IAA with the competence to take decisions, often in a large number of individual cases (decision factory), or to routinely perform specific tasks which cannot be entrusted to the market.

Participation (the participation of (organisations of) interested parties in public administration) is the raison d'être for the third type of IAA, a motive which can be traced back primarily to democracy, basic rights (self regulation) and effectiveness (increased support for administrative actions).
This typology also applies to agencies surrounding the central administration that cannot be considered IAAs.

14 Hereinafter we will refer to the text of the (amended) bill as it was submitted to the First Chamber on March 26, 2002.

15 Explanatory memorandum, p. 4-5.

The above concerns general motives for institution. We have been asked whether EU-law has any influence on the institution of agencies under national law. It is clear that 'Europe's' influence is obvious in certain fields such as competition, European funds and finance. Especially regarding competition certain monitoring bodies have been instituted such as the Nma, Dte and Opta. These bodies have been instituted no doubt bearing in mind that without them the Netherlands would be in breach of European competition law. And yet, EU-law was never the main motive for instituting these authorities. In the financial sector, too, monitoring agencies existed before 'Europe' exerted its influence. However, EU-law has had its influence on the extent of their competences. On the competences of IAAs, see further paragraph 7.

2.2 Division according to specific tasks

Another division according to motives and goals is the division according to specific tasks.

In the civil service report *Doorlichting zelfstandige bestuursorganen* from 1999, the following five task combinations are distinguished:

a. general execution monitoring tasks. The agencies main task is the supervision of the implementation of (public law) regulations (supervisors);
b. decision making in individual cases of a non-monetary nature. This may involve granting licences or exemptions, arbitration and advice;
c. decision making as regards (re)distribution of money. This may involve granting subsidies (art funds) or other kinds of benefits such as study grants;
d. assessment of quality and supply of legal documents of confirmation. These are agencies in charge of testing products, assessing people and/or supplying certificates;
e. regulating a specific economic or social sector. This would mainly involve agencies that regulate certain professions (e.g. accountancy) or even an economic sector (e.g. PBO).

It will be obvious that this division is primarily concerned with IAAs. Numerous agencies with specific legal tasks fall outside this scope.

3 Further categorisation: numbers and sectors

In order to give a further indication of the number of independent agencies present in the Netherlands and the sectors in which these function, we can use a number of sources. Thus the General Chamber of Audit has published various surveys in this field over the last few years. In a report from 2000 it is mentioned that there are 3873 LEwSTs , of which 3401 have public and 472 private legal personality.[16]

It is less clear how many IAAs there are. This is largely due to issues of definition. In the Directives, e.g., both classic and red brick universities are excluded. This means

16 *Kamerstukken* II 1999/2000, 26 982, nos. 1-2, part 1 and *Kamerstukken* II 2000/2001, 27 656, nos. 1-2, part 2.

that in calculations the entire educational sector is excluded. The same happened in the earlier mentioned *Rapportage Doorlichting zbo's* from 1999. That report assumes that at the time of screening there are some 200 IAAs (educational agencies excluded, that is). Another definition problem comes with the bill for the Framework Act on IAAs. Pursuant to that, after all, there is a difference between IAAs that come under the Framework Act and IAAs that don't but which can be defined as IAAs.

A rather instructive survey can be found in the so-called referencelist LEwSTs and IAAs which the Ministry of Finance published January last. The purpose of that was to increase transparency regarding these phenomena. For the LEwSTs included in this list, reference was made to the abovementioned survey of the General Chamber of Audit. That list has been included in full. As far as the IAAs are concerned, appendix 1 with the memorandum regarding the report Framework Act on IAAs has been used. This includes all IAAs, both those covered by the Framework Act and those not. We consider it useful for the country report in hand to provide this survey here as an appendix. We do agree with the prior stipulated precondition of the ministry: the reference list is based on a combination of existing surveys and is intended only as an informative document.

What is remarkable about this survey is that some sectors have few or no LEwSTs and/or IAAs (Foreign Affairs and Defence). Other sectors on the other hand have quite a lot of them (Traffic and Water Management, Agriculture, Nature Management and Fisheries, Justice and especially Education, Culture and Sciences). This of course because various types of schools are also included. It should also be kept in mind that a large number of independent agencies has very limited, rather specific tasks. On the other hand, there are also agencies which extensive tasks, which are attributed far-reaching administrative or even legislative authority. This latter aspect will be discussed in more detail in paragraph 7.

4 Legal Basis and Form

In paragraph 0 we have already pointed out that independent agencies may have legal personality. In literature a distinction is made between public law and private law legal entities, but in fact only private law legal entities exist. The legal personality construction is only important from a private law point of view and has therefore been encoded in private law. The distinction private law vs. pubic law personality is only important to the extent that it indicates which law system applies to the internal organisation.

What entities within the administration can have legal personality is determined by Article 2.1 CC. The first paragraph of this Article gives legal personality to the State, provinces, municipalities, water boards and other public bodies which have been endowed with legislative powers pursuant to the Constitution (see PBO-bodies and other Article 34 Constitution agencies).

The second paragraph of said stipulation entails that all other government entities (here called 'bodies') can only have legal personality in as far as this is explicitly granted to them pursuant to legislation.

No strict criteria apply to granting legal personality. Various motives/expectations play a role here, such as the desire for financial independence, independent participation in private law legal relations, establishing independent civil law liability or even the wish to be independent.

In literature many complaints can be found about the way in which the issue of granting legal personality is dealt with. There are no clear guidelines with which to answer the question whether granting legal personality is the best option. As a consequence daily practice sometimes shows strange results. Thus, for instance, the OPTA is an IAA with its own legal personality and the Nma, as yet a ministerial service, will soon also be an IAA but without legal personality. In the case of OPTA, the main reason for granting legal personality was its independence. As regards the Nma this seems to be no longer of any importance to the legislator. That is to say, the Minister of Economic Affairs seems to feel that subscribing individual powers of direction offers sufficient guarantee of independence. None of it seems very logical.

Furthermore, one has to bear in mind that independent agencies may exist without independent legal personality. The best known example is the Electoral Council, an IAA that is part of the legal entity the State.

Up till now we have primarily discussed public law legal entities. It is often forgotten that quite a lot of administrative authority is exercised by private law legal entities, such as associations and foundations. Why in one instance a certain administrative task is performed by a private law legal entity and in another by a public law legal entity is – apart from a few historic coincidences – often difficult to explain.

In short, answering the question whether independent agencies have a specific legal form and if so, what that is, we are faced with a not so coherent aggregate. Directive 124b, however, voices a clear preference for the public law legal form as regards granting legal personality to IAAs. Why this preference? The explanation with the Directive is not very clear on this. It seems to primarily concern the clarity and transparency of the administrative body. In the next paragraph we will discuss in detail that this requires rather more. Besides, the public law structural form appears to hold some advantages regarding the (clarity of) legal protection possibilities in as far as the independent agency takes decisions as defined in the General Administrative Act. See further paragraph 8.

Pursuant to Directive 124e an IAA is established by or pursuant to an act. The attribution of public authority to non-public law agencies also occurs by or pursuant to legislation.

All this has its repercussions regarding the limitation of ministerial accountability and the related possibilities for parliamentary control. Another concept that is involved here is the principle of legality, at least as it is perceived in the Netherlands, which means that at least breaches of freedoms and encumberment of property need a legal basis.

5 Organization and personnel composition

We noticed that as regards legal form there is no unity, but this holds even more true as far as organization and personnel composition are concerned, especially in case of public law independent agencies. The Directives leave the legislator much scope for specific interpretations in individual cases.

5.1 Directives

Pursuant to Directive 124i the following matters are regulated in the Act pursuant to which the IAA is established: the executive structure, modes of appointment, of renewed appointment, suspension and discharge of executive members by a Minister of the Crown, as well as the periods for which executive members are appointed. Pursuant to the second paragraph of Directive 124i no civil servants answerable to the minister will be appointed members of the executive board. This in order to avoid the situation where the minister may exercise his influence on the decisions of the executive board via civil servants answerable to him.

In case of an IAA which is established because participation of social organizations is considered highly desirable in view of the administrative tasks involved (ref. Directive 124c, sub c), persons from social organizations will be appointed on the executive board if that is to be considered highly desirable in light of the administrative task in hand.

Should other bodies be established alongside the executive board, Directive 124j stipulates that the relations among and the competences of these bodies be regulated in the establishing act. This would be the case for a supervisory board, for instance.

So, although the Directives do indicate that certain things must be arranged regarding organization and personnel, the answers as to how and why are less clear. In everyday practice, therefore, the legislator has acted more or less creatively per institution.

This is, by the way, rather undesirable for various reasons. A general statutory regulation (the Framework Act) would impose unity. In his dissertation Zijlstra already argumented that the principles embedded in the requirements of a democratic constitutional state request a clear and transparent administrative organisation.[17] The preadvice which he wrote together with Ten Berge for the NJV contains a few more practical reasons for a general statutory regulation. Firstly: 'the desirability of an organization and division of tasks that is clear and transparent to all involved, which is not helped if like entities are called different names or if the same name means one thing in one act and something else in another (such as 'directive', 'supervisory board' and 'executive board'). Secondly: the current situation means that those in charge of drafting an establishing act regarding a legal entity sui generis will have to invent the wheel time and time again, which is highly inefficient.' With reference to the disserta-

17 Zijlstra 1997 (note 23), p. 56-57 and 139-151.

tion of Boxum,[18] Ten Berge and Zijlstra consider a general regulation also useful in that it will prevent loopholes which are neither intended nor desirable. The final argument they put forward is that a general regulation which offers certain standard types of public law legal entities (comparable to the private law legal entity system of Book 2 CC) has the advantage that the in some aspects problematic private law legal entity is less often required.[19]

5.2 Framework Act Bill

Ergo, this general regulation could be the Framework Act IAAS. From that point of view it is a shame that the Framework Act Bill does not contain very many organizational stipulations. Article 9 stipulates that a member of an IAA cannot at the same time be a civil servant answerable to the minister. Pursuant to Article 12 the minister appoints, suspends and discharges the members of an IAA (paragraph 1). Suspension and discharge only occurs in case of proven unfitness or incapacity for the function in hand or in case of other overbearing reasons embedded in the entity concerned. Discharge may furthermore occur at personal request (paragraph 2). Article 13 stipulates that a member of an IAA may hold no other side functions which are undesirable with a view to the proper fulfilment of his job or to the maintenance of his independence or the confidence therein. Pursuant to Article 15 personnel employed by an IAA which is not part of the State, is covered by the legal position regulations applicable to civil servants appointed by ministries. Article 16 stipulates that personnel employed on behalf of an IAA, comes under the supervision of the IAA and is solely answerable to that authority for its work.

What is remarkable is that the Bill has nothing to say on the organization of the executive board. Thus, for instance, there are no stipulations on terms of appointment, internal division of competences (if applicable) or substitute executive members. The bill is also silent as regards the public aspect of meetings. The least one would expect regarding this important issue is a stipulation comparable to Directive 124r: 'Meetings are open to the public pursuant to rules incorporated in the establishing act.'

This feels like a lost opportunity certainly as far as the position of supervisory bodies is concerned (Supervisory Councils). After all, quite a few IAAs have this organ. In practice, however, they are quite diversely structured. Also as regards appointment and discharge there appear to be differences for which there are no obvious reasons. More important, though, is the fact that there is some confusion about tasks and competences of these Supervisory Councils (SC). Do they supervise on behalf of the minister, or are they entirely at the service of the proper functioning of the IAA?

18 J.L. Boxum, *Algemene wetgeving voor zelfstandige bestuurslichamen*, Deventer: Kluwer 1997, p. 10-11.

19 J.B.J.M. ten Berge/S.E. Zijlstra, *De publiekrechtelijke rechtspersoon in ontwikkeling*, preadvice NJV, Deventer: W.E.J. Tjeenk Willink 2000, p. 77-78. See also K. Schroten, *De overheidsstichting op het niveau van de centrale overheid*, dissertation Deventer: W.E.J. Tjeenk Willink 2000, especially chapters 4 and 5.

These problems have been clearly described by Ten Berge and Zijlstra.[20] In practice there prove to be quite a number of misunderstandings in this regard. The committee Borghouts plainly opts to present the SC in terms of internal (quality) supervision, as an internal supervisor therefore.[21] And that is exactly where the introduction of an SC seems most profitable. Like Boxum we are of the opinion that it is incorrect to view an SC as a intermediary or supervisor on behalf of the minister, let alone a buffer between minister and executive board.[22] In the latter instance the SC hinders the proper execution of competences by the Minister. In the first instance the SC will be regarded a ministerial intruder that had better not receive all information, thus diminishing the impact of the SC on improving the quality of the performance of tasks.

In order to put an end to the confusion mentioned above, in order therefore to enhance the transparency of independent administration, it is certainly recommendable to enclose a regulation on SCs in the Framework Act. This will also acknowledge the requirements regarding transparency of supervision as formulated – quite rightly – by the committee Borghouts.

From a point of transparency, among others, it is remarkable that Article 11 of the Framework Act does not stipulate that the IAA draws up an administrative regulation. The drafting of such an administrative regulation remains optional but in case one is introduced it needs the approval of the minister. The explanatory memorandum provides no argument why an administrative regulation is not obligatory. It does motivate, however, the ministerial approval. 'The reason is that the minister has overall accountability for the performance of the IAA and must therefore exert influence on the rules included in the administrative regulation – for instance rules on the manner of decision taking, division of tasks between members et cetera – the functioning and performance.'[23] Of course, internal functioning is of importance for performance, which implies the importance of transparency – and not only for the minister – about the organization of the executive board. It is subsequently strange that merely ministerial accountability for internal task division is created, and only for cases where there is an administrative regulation.

6 Financing

6.1 The Directives

In the Directives certain stipulations have been included relating to the financing of IAAs. Directive 124n requires clarity about the financing of IAAs. Pursuant to paragraph 1, financing is to be regulated in the establishing act of any IAA that is not part of the legal entity State. Financing can, as is apparent from the explanation, be

20 See their preadvice for the NJV, p. 68 ff.

21 'Vertrouwen in onafhankelijkheid,' p. 10, recommendation 4.

22 Boxum 1997, p. 139.

23 MvT, p. 24.

arranged in various ways. Via a contribution charged to the State budget, for instance. This is what usually happens. The IAA may also be funded from the proceeds of charges and/or fees. In case these only partially cover the budget, Directive 124n paragraph 2 furthermore stipulates that it is advisable to declare Title 4.2 of the General Administrative Act applicable. Depending on the nature of the activity, interested parties or beneficiaries of a certain service rendered by the IAA can be asked a fee or repayment. The explanatory memorandum to the establishing act is to indicate how a specific IAA will be financed as regards its tasks (paragraph 3). Pursuant to Directive 124o the establishing act stipulates that an IAA that is not part of the legal entity State shall draw up a budget (paragraph 1). Pursuant to paragraph 2 the act determines financial supervision. The act furthermore determines for what private law statutory activities an IAA that is no part of the legal entity State needs prior consent of the minister or the Justice Minister (paragraph 3). Directive 124p then prescribes that the establishing act determines that an IAA not being a part of the legal entity State, will draw up a financial report each year which will be submitted to the minister, accompanied by a declaration from an accountant. For this too a specific model will be used. Pursuant to paragraph 2 the establishing act of an IAA not being part of the legal entity State will encompass the following stipulation: Our Minister may impose rules on the structure of the budget, the financial report and any attention points for the accountants check.

6.2 Framework Act Bill

As was mentioned before, about half of the amounts involved with IAAs comes directly from the State budget. The General Chamber of Audit has emphasised several times that there is insufficient grasp of the legitimate and efficient use of state means by independent agencies. Over the years some improvements have been made. The Framework Act Bill aims to specifically improve the supervision of financial administration. Chapter 4 (Stipulations concerning financial administration) forms the core of the Framework Act. By far the most stipulations concern financial supervision.

The various IAAs are divided according to their (separate or otherwise) legal personality. For public law IAAs that are part of a legal entity established under public law, the Framework Act Bill contains several stipulations. Firstly, we distinguish between IAAs that are part of the legal entity State and those that are not. Article 25 stipulates that an IAA that is a State body must submit its draft budget for the coming year to the minister before 1st April each year. Article 26 prescribes that an IAA that is no State body will each year submit its budget for the coming year to the minister at a time determined by the latter. As regards this second category of IAAs a few more stipulations related to the budget are included. These do not apply to IAAs that are State bodies as these have to comply with the exhaustive regulations of the Governments Accounts Act. For public law non-State IAAs Article 27 stipulates that the budget will comprise an estimate of revenues and costs, of intended investments and of income and expenses. For each budget entry an explanation is provided. The

explanation indicates what budget entries concern the performance of tasks the IAA is charged with by or pursuant to an act, or any other activities. Unless the tasks to which the budget pertains have never before been executed, the budget comprises a comparison with the budget for the current year and with the latest approved year account. Article 28 stipulates that the budget shall furthermore comprise: a. in case the law determines that the costs of an IAA shall be charged to the State budget: a proposal to the minister concerning the amount to be included in the State budget for the coming year; b. in case the law determines that the costs of an IAA shall be covered by the fees to be charged by the administrative authority: a proposal to the minister concerning the fees to be charged in the coming year; c. in case the law stipulates that the costs for an IAA should be covered in part by the State budget and in part by fees: a combination of proposals as mentioned under a. and b. In case the IAA includes any other benefits or income in its estimate, these are listed separately and explanations are attached. Pursuant to Article 29 the decision to finalize the budget requires the approval of Our Minister. In case of breach of law or general interests this approval may be withheld. For both public law State and non-State IAAs Article 30 stipulates that an IAA must immediately notify the minister in case during the year significant differences develop or threaten to develop between the actual and budgeted costs and benefits. It must also indicate the cause of these differences.

As regards administration and accountability in case of public law IAAs that are no State bodies, the Framework Act Bill also contains separate rules. Article 32 indicates that the minister may decide that an IAA needs his prior consent: a. to establish or participate in a legal entity; b. to obtain in ownership, remove or emburden registered properties; c. to conclude or undo agreements to own, remove or emburden registered properties or to hire, rent or lease such; d. to enter into credit agreements or money lending agreements; e. enter into agreements in which the IAA undertakes to stand guarantee including guarantee for debts of third parties or in which it partakes as guarantor or severally liable co-debtor or stands up for a third party; f. to create funds or reservations other than neutralisation reserves, as mentioned in Article 33; g. to file for bankruptcy or to apply for suspension of payment. The abovementioned Article 33 stipulates that an IAA must create a neutralisation reserve. The difference between the realised revenue of an IAA and the costs involved in the activities respectively benefit or burden the neutralisation reserve. The interest gained on the neutralisation reserve is added to it.

Pursuant to Article 34 an IAA submits its year account to the minister together with the annual report mentioned in Article 18. The decision to finalize the year account requires his approval. This approval may be withheld in case of breach of law or general interest. Article 35 determines that the year account which accounts for the financial execution and the services rendered over the past fiscal year is structured as much as possible under analogous applicability of Title 9 Book 2 Civil Code. It is accompanied by a declaration on truthfulness, provided by an accountant as mentioned in Article 393, first paragraph, Book 2 CC, who is hired by the IAA. In hiring the accountant the IAA will demand that upon request the minister is given insight

into the supervisory work of the accountant. The declaration also applies to the lawful collection and spending of means by the IAA. The accountant adds to the declaration a report of his findings relating to the question whether the execution and organization of the IAA meet with the demands of efficiency.

Another category of IAAs for which the Framework Act Bill gives rules relating to performance and accountability, are private law IAAs. These rules apply pursuant to Article 36 to these IAAs unless Title 4.2 General Administrative Act applies to the IAA. Pursuant to Article 37 the Articles 26 through to 35 apply in case the IAA performs only the tasks and immediately related activities it has been allocated under law or pursuant to the law by an order in council or by ministerial regulation. Therefore, the same regime applies as to public law IAAs. Article 38 stipulates that if an IAA performs the tasks and immediately related activities it has been burdened with by law or pursuant to the law by an order in council or by ministerial regulation alongside other tasks: a. it will keep separate books as regards these tasks and activities and b. it will account for these tasks and activities separately in its year balance sheet.

7 Tasks and competences

In paragraph 2 we already listed the type of tasks that are or can be executed by IAAs. We will now discuss the ways in which independent agencies procure tasks and competences and especially what competences these are. Attention will be paid to the fact that these are usually administrative competences. Attributing legislative powers to agencies occurs less often and is considered possible to a limited extent by the Directives.

7.1 Background

The basic assumption in a democracy is that tasks and competences of administrative authorities must in principle be based on a decision taken by (also) a general representative organ (States General, provincial council, municipal council). For administrative authorities at State level this means that their tasks and competences must have a foundation in statutory law. This can only be different in cases of so-called *Leistungsverwaltung* (especially subsidies). However, since the inclusion of a regulation regarding subsidies in the General Administrative Act, the abovementioned principle applies in those cases too. The extent of tasks and competences of administrative authorities is also defined by the democratic principle in a democracy: the most important administrative competences must be given to general representative organs or by bodies that are supervised by general representative organs. Starting point in a democracy is in any case that the legislative power can only be executed by or in combination with general representative organs.[24]

24 Ref. Zijlstra, *o.c.*, p. 54, C.A.J.M. Kortmann, *Constitutioneel recht*, 1997, p. 51.

This general starting point for the organization of an administrative authority in a democracy has some consequences for the allocation of competences and tasks to an IAA. As was said above, IAAs are government bodies that fulfil administrative tasks without being in a hierarchically subordinate position to the minister. Ministerial accountability for their actions is limited to the competences the minister has as regards an IAA. In case of an IAA therefore we speak of limited indirect democratic supervision. It is therefore from a point of democracy quite correct that Directive 124e of the Directives for drafting legislation stipulates that the States General as co-legislator co-decides the establishment of an IAA and especially the attribution to an IAA of public authority. In statutory law terms an IAA can be called a form of functional administration.[25] It serves a public interest, such as the interest of stability in the financial sector (esp. DNB/National Bank) or the interest of a good functioning privatised telecom market (OPTA). An IAA is therefore characterised by a closed household: it must not perform any tasks it has not been allocated by or pursuant to the law. As mentioned above, only the legislator may decide the extent of the set of tasks and competences of an IAA.[26] Ergo, an IAA is not allowed to determine the extent of its public tasks itself. This is markedly different from what is called general administration in constitutional law – which is exercised by bodies of state, provinces or municipalities – which in contrast has a general set of tasks which in the case of provinces or municipalities is of course limited by their territory. There, in other words, we speak of an open household.

In attributing tasks and competences and the subsequent execution thereof to administrative authorities we need to make a principle distinction between tasks on the one hand and competences on the other.[27] For instance, the allocation of a task to an IAA by the formal legislator does not mean that the IAA is at the same time attributed the power to execute that task. For that purpose the legislator needs to separately attribute power. Of course, the setting of tasks and allocating of powers are closely related. To set a task without extending the necessary powers would make the task an empty shell. Having power with no specific goal or task makes little sense either. However, deducing powers from being set a task is at loggerheads with the principle of legality and with the system of limited powers which is at the basis of Dutch constitutional law. This does not mean, however, that this distinction is always strictly adhered to in legislation or jurisprudence. In jurisprudence it is often the wish to allocate legal protection which convinces the administrative judge to deduce the

25 E.g. C.P.J. Goorden, *Verzelfstandiging: naar een doorzichtig en geregeld bestuur*, VAR-series 118, 1997, p. 32 ff., M.M. den Boer, *Verzelfstandiging van bestuurstaken op z'n Hollands*, 1999, p. 42 ff.

26 Den Boer, *o.c.*, p. 43, considers this a rule of non-statutory constitutional law. The Directives for legislation too contain this rule (ref. Directive 124e, paragraph 2, and Directive 124g). More on these Directives, see above paragraph 5.3.

27 Ref. among others Kortmann, *o.c.*, p. 36-37.

competence to take a certain decision from the existence of a statutory public task.[28] In some cases a *statutory* public task is not even required.[29] To our opinion both legislator, judiciary and IAAs should be more aware of this distinction between task and competence.

The basis in constitutional and administrative law doctrine for allocating tasks and competences to supervisory IAAs, and the extent thereof has been sketched above. Now to the question how this basis has been implemented in (Constitutional) legislation, the Directives for drafting legislation and the Framework Act Bill.

7.2 Constitution

Paragraph 2 already clearly stated that the Constitution in general says noting about independent agencies or IAAs. Upon further reflection the Constitution does contain a rule regarding a certain category of IAAs, namely IAAs that come under the denominator 'organs of public bodies' in the sense of Article 134 Constitution.[30]

As far as tasks and competences of IAAs/organs of public bodies are concerned Article 134, paragraph 2, definitely stipulates that the law rules the *tasks* and organization of these public bodies, as well as the consistence and *competence* of their executive boards as well as the openness of their meetings (italics authors). It is also stipulated that by or pursuant to the law the executive boards of these public bodies may be allocated regulating (i.e. legislative) competences. An important competence – the legislative one – can therefore, according to the Constitution, be allocated to organs of a public body. The issue to what extent allocating legislative powers to IAAs not being an organ of a public body is allowed, will be discussed further when the Directives for drafting legislation are discussed (see paragraph 7.4). The latter include some regulation on this issue.

28 E.g. ARRvS 14 June 1984, BR 1985, p. 19 (regarding the general public law task attributed to the minister by the Nature preservation act), Vz. ARRS 8 August 1991, *AB* 1992, 354 and Pres. Rb. Breda 16 April 1995, Rawb 1995, 88 (regarding the statutory task to accept asylum seekers pursuant to the Welfare Act). See on this matter further F.J. van Ommeren, G.A. van der Veen, *Het Awb-besluit*, Ars Aequi Cahiers Staats- en bestuursrecht part 8, 1999, p. 50 ff. and before then F.C.M.A. Michiels, *De Arob-beschikking*, Den Haag 1987, p. 168-183. On the deduction of a competence from a task (for other reasons, though, than providing legal protection), see also the disputed jurisprudence regarding Article 28 Police Act (old), the current Article 2 Police Act (HR 24 October 1961, NJ 1962, 86 with note BVAR).

29 ABRvS 10 April 1995, *AB* 1995, 498 (regarding the barring of foreign ships from territorial seas) and ABRvS 18 February 1999, *AB* 1999, 143 (regarding the legalization of foreign documents).

30 In this sense Zijlstra, *o.c.*, p. 95, M.M. den Boer, *Zelfstandige bestuursorganen uit de zelfkant van de democratie*, VAR-series 118, 1997, p. 172. Not everyone shares this opinion. See e.g. Goorden, *o.c.*, p. 70-71.

7.3 Framework Act Bill

As we have stated before, there is as yet no general statutory framework regulation encompassing rules on tasks and competences for IAAs. The Framework Act Bill does contain some general stipulations on this matter. Striking difference with the Directives that are to be discussed below (paragraph 7.4), is that the Bill has no limiting stipulations regarding the allocating of legislative powers. So what does the Bill stipulate?

Article 3 stipulates that an IAA can only be established based on a number of motives. In other words, it should involve tasks where a. there is a need for independent judgement based on specific expertise; b. concerning strictly regulated execution in a large number of cases; and c. participation of social organisations must be deemed highly desirable in view of the nature of the administrative task concerned (paragraph 1). This first paragraph is likewise applicable in case an already existing IAA is charged with another task concerning the exercise of public authority than the one it was initially established for (paragraph 2). Article 4 Framework Act Bill stipulates that public powers are attributed only to organs of a statutory body which has been established under public law (paragraph 1). In deviation from the first paragraph an organ from a statutory body established under private law may be allocated public powers by law or pursuant to the law by a general rule of administration or a ministerial rule, provided: a. this must be deemed highly desirable for the representation of the public interest involved and b. there are sufficient guarantees that the exercise of those powers will occur independent from any other existing or future tasks of the organisation. Pursuant to Article 5 the minister notifies both chambers of the States General of any intention to attribute to of withdraw public powers from an IAA by general administrative rule or by ministerial regulation pursuant to law.

So in the end it is the special act, usually the one establishing an IAA, which provides the primary statutory framework for the tasks and competences of an independent agency. It is this act which indicates what tasks and competences an IAA has (see above). For IAAs, therefore, the special act is of eminent importance. Their competences are derived solely from the special act (or from delegation decisions). But as regards the content of their tasks too they must rely on the special act; they have, as we said before, a closed household. The possibility of an appeal on the general administrative competence of the minister for an extension or wider interpretation of tasks, as might be feasible, though not without problems, for non-independent supervisors, is not possible for independent supervisors. Whatever the situation, no competences can be deduced from the wide or narrow interpretation of tasks; competences can only explicitly be allocated or delegated. This does not always seem to be understood very well.

7.4 *The Directives*

Firstly, Directives 124c and 124d are relevant as far as tasks and competences are concerned. These involve the prequestion whether a specific administrative task – e.g. a supervisory task – should at all be charged to an IAA.

Directive 124c, linking up with the IAA-characterisation as developed in literature, indicates just like Article 3 Framework Act Bill that an IAA can only be established in case of need for independent decisions based on specific expertise, in case there is strictly regulated execution/implementation in a large number of cases and in case the participation of social organisations must be deemed highly desirable in view of the nature of the administrative task concerned (paragraph 1). A general requirement that applies is that the advantages of reduced ministerial competences as regards the administrative task in hand outweigh the disadvantages of reduced supervision by the States General. Pursuant to Directive 124d the explanation with the regulation that attributes tasks to an IAA must then motivate the decision to do so. At least the following questions need to be answered: why should the government perform or continue to perform this task, why is it undesirable to delegate performance of this task to provincial or municipal authorities, why isn't the task executed under full ministerial accountability, what decisions have been taken as regards costs, administrative burdens and efficiency as compared to charging or continuing to charge a minister with the task and how has execution of the task been geared to the tasks of other administrative authorities at national, provincial or municipal level?

Once a well-argumented decision is made to have certain administrative tasks performed by an IAA, the matter of allocating tasks and competences is addressed. Regarding the allocation of tasks Directive 124g is primarily of relevance. It stipulates that by, or in special instances pursuant to, the law a precise description of the task of an IAA is included. Special attention should be paid to the explanation with this directive. Here too the earlier mentioned closed household of an IAA is mentioned. To the explanation as well this implies that IAAs do not perform any tasks – irrespective of whether these are main tasks or auxiliary tasks – that are not allocated by or pursuant to the law. Ergo, they cannot themselves choose to execute new administrative tasks. This is only different in case of private law agencies active in the market which have been vested with public authority, and only as regards their other (private) tasks. Pursuant to Directive 124e, paragraph 2, the allocation of public authority to an IAA is done by, or in special instances pursuant to, the law. In relation to subsidies this may be different (paragraph 3). According to the explanation not every allocation is of such importance that parliament should be directly involved. Depending on the nature of the task inclusion in lower regulation may suffice.

From a democratic point of view the stipulations of Directive 20 in combination with those of Directive 124f are of the utmost importance. Pursuant to Directive 20 generally binding regulations from the State are implemented only by law, order in council, ministerial rule or regulation of an IAA while observing Directive 124f. Directive 124f paragraph 1, stipulates that *legislative powers* may be allocated to an IAA

only to the extent that it involves organisational or technical subjects or in special instances provided the power of approval of the regulation by a minister has been arranged. The explanation to this Directive states the following: general binding regulations are in principle only decreed by the cabinet (and States General), provinces or municipalities.[31] Furthermore, an organ of a public body, as meant in Article 134 Constitution, may be attributed such power. Under special circumstances it is possible that regulations are implemented on subjects other than organisational ones, but only in case ministerial consent is provided. The argumentation thereof in the explanation is subject to very strict conditions because of its exceptional nature.

This directive and its explanation do give rise to some questions. Why for instance would regulation related to technical and organisational subjects be allowed? Following Zijlstra we could after all state that especially in case of the 'division of policy and implementation' type of IAA generally binding rules concerning the exercise of certain competences by this IAA are in any case not to be determined by the IAA itself.[32] The Directives 124f and 20 therefore fall short in this respect. Backdrop to this opinion is that the use of policy and decision scope should fall as much as possible to organs of the democratic system. Policies also develop during implementation. However, this should be fed back as much as possible to the organ which primarily sets out the policies, and if possible even to the legislator in order to be encoded in a generally binding regulation.

On the other hand, in case of an IAA of the 'participation' type it may be acceptable for the organ to also impose furtherreaching generally binding rules, especially if it has some form of internal democratic legitimization. In such cases, however, the only possible addressees of this legislative competence are those that have influence. There is then no need for a limitation to technical and organisational subjects.[33] Such a participation-IAA with internal democratic legitimization is in essence an organ of a public body. In this context the question arises whether the restriction of Directive 124f also applies to IAAs that are organs of public bodies. A strong argument against this is that Article 134 Constitution imposes no such limitation. More so, it states unconditionally that such organs may be attributed legislative power. This can also be deduced from the explanation to Directive 124f[34] and the old explanation to Directive 20. There, after all, it was stated that these bodies are often established with a view to attributing them such (legislative) power.[35] However, should the legislator wish to allocate legislative powers to IAA which exceed the competence to regulate purely technical or organisational subjects, he should opt for an organ of a public body.

31 The latter, provinces and municipalities, is of course a not so very precise phrase as it involves *organs* from provinces and municipalities.

32 S.E. Zijlstra, *Zelfstandige bestuursorganen in een democratische rechtstaat*, 1997, p. 229.

33 See Zijlstra, *o.c.*, p. 229.

34 See above. This explanation, after all, states unconditionally that organs of public bodies can also be attributed legislative powers.

35 Zijlstra, *o.c.*, p. 239.

8 Political and administrative supervision

In paragraph 2, where we discussed the statutory position and context of independent agencies, we already pointed out that democratic supervision of independent agencies and their functioning hinges on ministerial supervision. We also pointed out the inherently limited nature of this supervision: it depends on existing ministerial competences as regards independent agencies and precisely because of the independent nature of these agencies such competences are limited in nature and scope – more specifically, they involve no competences to give individual directions in specific cases.

8.1 Ministerial competences pursuant to the Directives

What do the Directives stipulate on the supervisory competences a minister should have as regards an IAA? In paragraph 5 we already pointed out the stipulations concerning competences regarding personnel composition of the executive board of an IAA (appointment, suspension, discharge, etc.). Directive 124l is important: pursuant to paragraph 1 the relationship minister-IAA is regulated. In order to execute ministerial accountability a minister or the Crown are vested under paragraph 2 with sufficient competences as regards the IAA. A minister is attributed by law the power to approve tariffs and charges for the performance of administrative tasks in case they are set by an IAA. In case there is or may be competition with other suppliers, such as with legally required certification, the approval competence can be discarded or a fixed maximum tariff may suffice (paragraph 3). Pursuant to paragraph 4 a minister is allocated the competence to approve the administrative regulations in the establishing act and, in as far as the IAA concerned is no part of the legal entity State, also the competence to approve the budget and long-term estimate. Subsequently, depending on the nature of the task of the IAA, the competences mentioned in paragraph 5 may be allocated to a minister: a. deciding the generally binding rules concerning the subjects exhaustively listed in the act; b. deciding the generally binding rules or policy regulations concerning the execution of the task; c. the competence to approve, suspend or annul indicated decisions or the competence to consent with other administrative activities of the organ.

As we said before, it is crucial for the independence of an IAA that the minister is not attributed the powers to give specific directives. This principle is encoded in paragraph 6 of Directive 124l. Paragraph 7, finally, stipulates that a minister will promote a change of the statutory regulation as soon as it becomes obvious that he has insufficient competences to effect his ministerial accountability.

Another supervisory mechanism is encoded in Directive 124m: the act will in principle encompass a duty neglect rule. Furthermore we must draw attention to Directive 124s pursuant to which an IAA is obliged by or pursuant to the establishment act to submit a report to the minister each year.

8.2 Ministerial Competences based on the Framework Act Bill

For approval with mandate attribution an IAA needs, pursuant to Article 8 Framework Act Bill, the approval of the minister unless it is a case of mandate attribution by the minister. Approval may be withheld because of breach with the law or because the competence that is being delegated would to the minister's opinion hinder the proper functioning of the IAA. Article 11 stipulates that in case an IAA determines an administrative regulation pursuant to statutory prescription, this administrative regulation requires approval by the minister (paragraph 1). Pursuant to paragraph 2 approval may be withheld because of breach with the law or because the administrative regulation would to the minister's opinion hinder the proper functioning of the IAA.

Especially chapter 3 on 'Information provision, steering and supervision' is of importance. Article 17 indicates that if an IAA is competent to fix tariffs, the height of the tariffs to be fixed by the IAA requires ministerial consent (paragraph 1). This consent may be withheld in case of breach of law or public interest. The consent is not required if the IAA is limited by a maximum amount for the tariff (paragraph 2). Pursuant to Article 18 an IAA will draw up a annual report each year before 1 July. This annual report describes both performance and implemented policy. It furthermore describes the policy implemented as regards quality improvement. The report is submitted to the minister and both chambers of the States General. Pursuant to Article 20 an IAA will upon request provide the minister with all information necessary for the execution of his task. The minister may request to view all business details and papers if such is in all reasonability necessary for the proper execution of his task. An IAA will when it submits these details, indicate where necessary the confidential nature of the information. This confidentiality may stem from the nature of the data or from the fact that natural or statutory entities have submitted these under the condition that they would be treated as confidential.

Article 21 stipulates that the minister may impose policy rules as regards the performance of an IAA. These are announced in the *Staatscourant* (Official Gazette). Pursuant to Article 22 the minister may annul the decisions of an IAA. The decision to annul is published in the *Staatscourant*. If the minister is of the opinion that an IAA seriously neglects its tasks he may pursuant to Article 23 take the necessary measures. Unless it is an urgent case, these will be imposed only after the IAA has been given the chance to rectify the situation within a term set by the minister. The minister immediately informs both chambers of the States General of any measures taken by him.

Article 29 indicates that the decision to finalize the budget requires the approval of the minister. This approval can be withheld because of breach of law or public interest. Pursuant to Article 32 the minister may decide that an IAA needs his prior consent to:

a. establish or partake in a statutory entity;
b. hold in ownership, dispose of or burden registered properties;

c. enter into or cancel agreements to buy, dispose of or burden registered properties or to hire, rent or lease such;
d. enter into agreements concerning credit or loans;
e. enter into agreements in which the IAA undertakes to stand guarantee including guarantee for debts of third parties or in which it partakes as guarantor or severally liable co-debtor or stands up for a third party;
f. set up funds or reserves other than the neutralisation reserve as mentioned in Article 33;
g. file for bankruptcy or to request suspension of payment.

Pursuant to Article 34 an IAA submits to the minister the year account together with the annual report as mentioned in Article 18. The decision to finalize the year account requires the minister's approval. This approval may be withheld in case of breach of law or public interest.

From a political supervision point of view the stipulations of Article 39 are also important. Pursuant to this stipulation the minister submits a report every five years to both Chambers of the States General for evaluation of the efficiency and effectiveness of an IAAs functioning.

8.3 General Chamber of Audit

The functioning of IAAs is also supervised via other means. An important role in this is for the General Chamber of Audit. It is beyond doubt that this General Chamber of Audit was the main force behind the idea of a framework act on IAAs. In this matter the General Chamber of Audit was and still is interested in more than merely regulating IAAs. Pursuant to Article 59 of the Governments Accounts Act the General Chamber of Audit is entitled to conduct an investigation into the legal and efficient use of means by 'statutory entities in as far as these perform a task regulated by or pursuant to statute and which are totally or partially financed from the proceeds of fees imposed by or pursuant to a statute'. Consequently, the General Chamber of Audit uses the notion of 'Statutory entity with statutory task' (LEwST) as the basis for its supervisory powers and its proposals for statutory regulations. As we have indicated above, the notion of LEwST is on the one hand broader than that of an IAA because it also covers statutory entities that have not been attributed public powers but which are financed from fees imposed by or pursuant to a statute. On the other hand, IAAs without statutory personality are not covered by the notion of LEwST. Which does not mean to say per se that they avoid supervision by the General Chamber of Audit. The latter, for instance, may give an opinion on the Electoral Council via the budget of the Ministry of Internal Affairs and Kingdom Relations.

Since 1995 the General Chamber of Audit has voiced its significant concerns on the limited insight ministers (can) have into the orderliness, controllability, efficiency of financial management and performance of LEwSTs. The General Chamber of Audit bases its concern on the correct assumption that public funds should be supervised by the public and subjected to public control. Based on the problems

noticed, the General Chamber of Audit has pressed not only the development of state-wide supervision of LEwSTs and not only as regards IAAs, but also the codification of a minimum set of competences for ministers in a framework act.[36] As was indicated, the Framework Act Bill now contains such a set.

It must be said that it was mostly the Second Chamber which gladly availed itself of the reports by the General Chamber of Audit in its quest for a framework act. In this context it is striking that until recently the Chamber made little work of supervising the performance of IAAs/LEwSTs, as is apparent from the Minderman's thesis.[37] Perhaps this will change significantly since in 2000 the 'Day of Reckoning' was introduced, the third Wednesday in May.[38] By means of policy priorities to be set beforehand by the Second Chamber, subjects are listed for each ministry for which it must account specifically – in terms of financial results. The independent agencies resorting under the various ministries too will be addressed in this manner. Their reports will be scrutinized by the General Chamber of Audit. The accounts and reports are submitted to the Second Chamber on the third Wednesday of May. A plenary debate is then held with the Finance Minister and the Prime Minister. Any questions left unanswered may subsequently be discussed with the ministers responsible.

It is as yet early days to decide whether this procedure will indeed have impact but it is to be hoped that by and by the discussions in the Second Chamber will cease to deal only with non-existing (ministerial) competences and that the main focus will be on developing a clear supervision or control philosophy, which would clarify the extent to which the Chamber can and will involve itself with the functioning of independent agencies.

8.4 National Ombudsman

Before we will discuss a different form of supervising the performance of independent agencies in paragraph 9 – i.e. judicial supervision – we must first point out another important control mechanism: supervision by the National Ombudsman. This agency is based on Article 78a Constitution. Pursuant to paragraph 1 the National Ombudsman conducts investigations into the activities of State administrative authorities and other administrative authorities appointed by or pursuant to the law. Further rules are incorporated in the *Wet Nationale Ombudsman* (Wno, National Ombudsman Act). Pursuant to Article 1a of this Act the National Ombudsman's supervisory competence covers the administrative organs mentioned there:

36 Latest in 'Verantwoording en toezicht bij rechtspersonen met een wettelijke taak', *Kamerstukken* II 1999/00, 26 982, nos. 1-2, p. 10.

37 G.D. Minderman, Tweede Kamer en rijksfinanciën, Den Haag: Boom Juridische Uitgevers 2000, p. 205-206.

38 Also known as 'Woensdag, gehaktdag' (Day of reckoning).

a. ministers;
b. administrative organs of provinces, municipalities and water boards and communal regulations which have been appointed conform Article 1b National Ombudsman Act;
c. administrative organs that have by or pursuant to a statutory prescription been attributed a task related to the police to the extent that it concerns the execution of that task;
d. administrative organs of provinces, municipalities or water boards and communal regulations to the extent that they concern activities of special investigation officers employed by them and
e. other administrative organs in as far as they are not excluded by general administrative rules.

Paragraphs 2 and 3 then contain some stipulations on the scope of the National Ombudsman's competence. Pursuant to paragraph 2 and in deviation from paragraph 1, under e, the National Ombudsman Act only applies to administrative organs in charge of education and research in the policy field of the Ministry for Education, Culture and Sciences in as far as they have been indicated by general administrative rules. Pursuant to paragraph 3 and in deviation from paragraph 1, the Act does not apply to the actions of *the Commissie gelijke behandeling* (Equal Treatment Committee) as mentioned in the *Algemene wet gelijke behandeling* (General Act on Equal Treatment).

Paragraph 4 offers a significant extension of the scope of the Wno. Here it is stipulated that the action of a civil servant committed while doing his duty is to be considered the action of the administrative authority under whose responsibility he is employed.

So, pursuant to Article 1a National Ombudsman Act independent agencies come under the supervision of the National Ombudsman in as far as they may be considered administrative authorities and to the extent they are not excluded by general administrative rule ex Article 1a under e.

A first point that deserves attention in this context is a limitation of the investigative scope of the National Ombudsman as regards substance. Under Article 16 he is not entitled to initiate (or continue) investigations into:
a. matters concerning general cabinet policy, including general policies for enforcing legal order, or the general policy of the administrative authority concerned, and
b. generally binding regulations. Secondly, the Act contains a limitation regulation as regards other supervisory mechanisms, especially judicial supervision. Pursuant to Article 16 the National Ombudsman is also not entitled to initiate (or continue) investigations;
c. while a statutory administrative law provision is available in relation to the action concerned, unless Article 6:12 of the General Administrative Act applies, or if pursuant to such a provision a procedure is pending;

d. while a procedure against the action is pending before a judicial instance not pursuant to a statutory administrative law provision, or while appeal against a decision taken in such a procedure is possible;
e. if a decision was taken by a judicial instance in a statutory administrative law provision regarding the action;
f. in matters concerning taxes and other charges if a statutory administrative law provision was available against the action;
g. regarding matters subject to judicial supervision.

These stipulations limit the supervisory competences of the National Ombudsman significantly also as regards the functioning of independent agencies (administrative authorities).

A further limitation lies in what the National Ombudsman may in the end achieve with his supervisory activities. He can take no legally binding decisions. In this lies a significant difference from judicial supervision. However, the Ombudsman can give his evaluation of a government action in a public report. He can also report on his investigations to the Second Chamber. In his annual report he includes an overview of complaints and of administrative authorities that fall short as regards administrative functioning. He may furthermore make recommendations of a concrete or general nature. The Ombudsman reports in his annual report on such recommendations and on the heeding thereof by the government body concerned. In daily practice the so-called intervention method has developed alongside. Once a complaint has been filed more informal means – such as information, invitation, mediation – are used to try and reach an early solution for the problems that have arisen. If this proves successful there is no further need for an investigation or report.

Besides, the limitation as to legal metal of the Ombudsman's decision does not impede the effectiveness of his supervision. This is largely due to the moral authority of the Ombudsman, the openness and publicity with which the agency of National Ombudsman and his reports are surrounded and the democratic structure and culture of our society which mean that administrative authorities will not or in any case only with very good arguments deviate from a decision by the Ombudsman.

9 Judicial Supervision

9.1 Administrative Court and Civil Court

For judicial supervision of the functioning of independent agencies it is important to link up with the difference between agencies that can be defined as administrative organs and those that cannot. In case of the first the administrative courts can supervise the 'decisions' these authorities take (Article 8:1 Awb). Important in this context is the interpretation of the concept of 'decision' of Article 1:3 Awb. We already remarked on this in paragraph 7. It is clear, however, that over the past few years the administrative courts have applied a rather broad interpretation. The most

important example thereof is the *zelfstandig schadebesluit* (independent damage decision). And there is also the case law about the so called *rechtsoordelen*. This development has, also as regards IAAs, resulted in an expansion of judicial supervision of actions from IAAs in material aspect even though it is formally limited to decisions. It must be noted though that various 'decisions' are excluded from legal protection via administrative courts (article 8:2 ff. Awb). This is especially so in relation to generally binding regulations and policy rules.

These non-appealable decisions and also other actions from independent agencies that are administrative organs as well as the actions from independent agencies not being administrative organs, can be brought before a civil court.

9.2 Criminal Court

Another question regarding judicial supervision of independent agencies is to what extent this can be done by the criminal court. An important decision is the *Pikmeer II* decision of the Hoge Raad (Supreme Council).[39] This shows that decentralised government bodies, more specifically public bodies as meant in Chapter 7 of the Constitution, can in principle be brought before a criminal court. This is only different – i.e. these bodies have criminal immunity – in case the prosecuted action in nature and in view of the legal system can legally only be performed by administrative officers in relation to the administrative task with which the public body is charged, so that it is impossible for any third party to partake in society at an equal footing to the public body. This is all different for the central government, the state. After all, from the earlier *Volkel* case it turns out that the state itself cannot be held criminally responsible for its actions.[40] This decision shows that criminal immunity for the State is unlimited.

What does this entail for the independent agencies discussed here? It can be stated beyond doubt that independent agencies that are statutory entities under private law can be criminally prosecuted, so that the criminal court may supervise their actions. As regards the remaining categories of independent agencies – independent agencies that do not have independent statutory personality but which are part of the statutory entity State, and independent agencies with statutory personality under public law – this is far less clear. The latter category partly overlaps with the public bodies covered by the *Pikmeer II* decision. Of course, in as far as that is the case, what was stipulated in that decision also applies to them. In as far as it concerns independent agencies with statutory personality under public law that are no public body, the reasoning of the *Pikmeer II* case seems to apply as well. After all, they also belong to the category decentralised government bodies and that is the category Pikmeer II, instead of Volkel, is all about. Finally, there is the category of independent agencies without independent statutory personality but which are part of the legal entity State. The

39 HR 6 January 1998, NJ 1998, 367.

40 HR 25 January 1994, NJ 1994, 598.

reason in the *Volkel* decision to maintain criminal immunity for the State was primarily based on the fact that ministers and secretaries of state are accountable to parliament for any actions by the State. Criminal prosecution does not sit well with that. However, as regards actions by independent agencies that are part of the State, ministers and secretaries of state are only partially accountable, namely to the extent that they have certain powers over these agencies. Therefore, complete criminal immunity as in *Volkel* is unnecessary. That could only apply to actions that come under ministerial accountability.

10 Finally

From the above discussion it is obvious that the Netherlands have a wide variety of independent agencies, differing both in organization and in the tasks and competences they have. The image of independent agencies functioning in the Netherlands can be defined as rather obscure. A coherent view on the functioning of the various types of agencies as yet does not exist. Some general legalisation is under way but it appears to be rather marginal and seems to bring mostly formal improvements. The core issue in especially political discussions seems to be that on the one hand the independence of the independent agencies needs safeguarding while on the other hand sufficient democratic supervision has to be guaranteed. An unambiguous choice for either independence or democratic supervision seems impossible.

APPENDIX

Independent administrative authorities and legal entities with statutory tasks

Foreign Affairs
Stichting Nationale Commissie voor internationale samenwerking en Duurzame Ontwikkeling and the Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden NV. The first can be defined as an IAA, the second as an LEwST.

Justice/Judiciary
Centraal Orgaan Opvang Asielzoekers (LEwST and IAA), Landelijk Bureau Inning Onderhoudsbijdragen (LEwST and IAA), Commissie Schadefonds Geweldsmisdrijven (LEwST and IAA), Stichting Reclassering Nederland (LEwST and IAA), Vereniging Slachtofferhulp Nederland (LEwST), Raden voor de Rechtsbijstand (LEwST and IAA), gezinsvoogdij-instellingen (LEwST and IAA), HALT-bureaus (deels LEwST), particuliere Jeugdinrichtingen (LEwST), particuliere TBS-inrichtingen (LEwST), College bescherming persoonsgegevens (IAA), Commissie Gelijke Behandeling (IAA), Bureau Financieel Toezicht (IAA) and the College van Toezicht Auteursrechten i.o. (IAA).

Internal Affairs and Kingdom Relations
Nederlands Bureau Brandweerexamens (LEwST and IAA), Nederlands Instituut voor Brandweer en Rampenbestrijding (LEwST and IAA), Stichting Administratie Indonesische Pensioenen (LEwST and IAA), Stichting Fonds vrijwillig vervroegd uittreden overheidsentityeel (LEwST and IAA), Landelijk Selectie- en Opleidingsinstituut Politie (LEwST and IAA), de Politieregio's (LEwST and IAA), Kiesraad (IAA), Raad voor het Korps Landelijke Politiediensten (IAA) and the committee in charge of management and control of the Dienst geneeskundige verzorging politie (IAA).

Education, Culture and sciences
(Rijks)museale instellingen (LEwST), Stichting fonds voor beeldende kunsten, vormgeving en bouwkunst (LEwST and IAA), Stichting fonds voor de amateurkunst (LEwST and IAA), Stichting fonds voor de podiumkunsten (LEwST and IAA), Stichting fonds voor de scheppende toonkunst (LEwST and IAA), Mondriaanstichting (LEwST and IAA), Stichting Nederlands fonds voor de film (LEwST and IAA), Stichting stimuleringsfonds voor de architectuur (LEwST and IAA), Stichting fonds voor de letteren (LEwST and IAA), Stichting Nederlands literair productie- en vertalingsfonds (LEwST and IAA), Stichting fonds voor het bibliotheekwerk voor blinden en slechtzienden (LEwST and IAA), Stichting stimuleringsfonds Nederlandse culturele omroepproducties (IAA), Commissariaat voor de Media (LEwST and IAA), Nederlandse Omroepstichting (IAA),[41] (landelijk) omroepbestel (LEwST), bevoegde

41 Appendix 1 of the *Nota naar aanleiding van het verslag Kaderwet zbo's* lists the Nederlandse Omroep-stichting as an IAA because it holds public authority pursuant to the Mediawet.

gezagsorganen primair onderwijs (LEwST),[42] bevoegde gezagsorganen voortgezet onderwijs (LEwST),[43] Regionale Opleidingscentra (LEwST), landelijke organen voor beroepsonderwijs (LEwST and IAA), Vakinstellingen (LEwST), diverse overige BVE-instellingen (LEwST), bevoegde gezagsorganen hoger beroepsonderwijs en universiteiten (LEwST),[44] Open Universiteit LEwST), Academische ziekenhuizen (LEwST and IAA), Koninklijke Nederlandse Academie van Wetenschappen (LEwST and IAA), Nederlandse Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek (LEwST and IAA), Koninklijke Bibliotheek (LEwST and IAA), Nederlandse Organisatie voor Wetenschappelijk Onderzoek (LEwST and IAA), Stichting Participatiefonds (LEwST and IAA), Stichting Vervangingsfonds (LEwST and IAA), Informatie Beheer-groep (LEwST and IAA), Bedrijfsfonds voor de Pers (IAA), Commissies indicatiestelling speciaal onderwijs (IAA), Stichting voor de Technische Wetenschappen (IAA), Nationaal Restauratiefonds (LEwST).

Finance
De Nederlandsche Bank NV (LEwST and IAA), Stichting Toezicht Effectenverkeer (LEwST and IAA),[45] Stichting Pensioen- en Verzekeringskamer, Waarborgfonds motorverkeer (LEwST and IAA), Waarderingskamer (LEwST and IAA), Stichting Het Nederlands Muntmuseum (LEwST), Stichting Joods Humanitair Fonds (LEwST and IAA),[46] Stichting Marorgelden Overheid (LEwST and IAA).

Defence
Stichting Ziektekostenverzekering Krijgsmacht (LEwST and IAA)

Volkshuisvesting, Ruimtelijke ordening en Milieu
Stichting Aboma plus Keboma (LEwST and IAA), Centraal Fonds voor de Volkshuisvesting (LEwST and IAA), Instituut voor Milieu en Agritechniek (LEwST and IAA), Dienst voor het kadaster en de openbare registers (LEwST and IAA), Keuringsinstituut voor Waterleidingartikelen (LEwST and IAA), Stichting Advisering Bestuursrechtspraak Milieu en Ruimtelijke ordening (LEwST), Stichting Bureau Architectenregister (LEwST and IAA), Reconstructiecommissie Midden-Delfland (IAA), Huurcommissies (IAA), NV Service Centrum Grondreiniging (IAA), Stichting Waarborgfonds Eigen Woningen (IAA), Stichting erkenningsregeling voor de uitoefening van het koeltechnisch installatiebedrijf (IAA).

42 In as far as this concerns educational agencies under the municipality's authority, these agencies are not be listed as LEwSTs according to Art. 59 paragraph 16 Cw.

43 See previous note.

44 Higher eductional insitutions (red brick universities and universities) are not registered as IAAs. It should be kept in mind that Directive 124z explicitely excludes them from the scope of the Directives, so that in effect they are IAAs.

45 The STE has been renamed Autoriteit Financiële Markten.

46 The agency is currently defined as an IAA by the Ministry of Finance.

Traffic and Watermanagement
ANWB (LEwST and IAA), Centraal Bureau Rijvaardigheidsbewijzen (LEwST and IAA), European Certification Bureau Nederland (LEwST and IAA), Exploitanten luchthaventerrein (LEwST), HISWA (LEwST and IAA), INNOVAM (LEwST and IAA), Instellingen afname examens klein vaarbewijs (LEwST and IAA), Koninklijk Onderwijsfonds voor de Scheepvaart (LEwST and IAA), Luchtverkeersleiding Nederland (LEwST and IAA), Nationale en Internationale Wegvervoerorganisatie (LEwST and IAA), Railinfrabeheer (LEwST and IAA), Railverkeersleiding (LEwST and IAA), Railned (LEwST and IAA), TNT-Post Groep BV (LEwST), Onafhankelijke Post- en Telecommunicatie Autoriteit (LEwST and IAA), Dienst Wegverkeer (LEwST and IAA), Nederlandse Loodsencorporatie (IAA), Regionale Loodsencorporaties (LEwST and IAA), Facilitair Bedrijf Loodswezen (LEwST and IAA), Stichting Scheepsafvalstoffen Binnenvaart (LEwST and IAA), Stichting Inschrijving Eigen Vervoer (LEwST and IAA), Raad voor de Transportveiligheid (LEwST and IAA), Commissie van beroep als bedoeld in art. 3 Wet rijonderricht motorrijtuigen 1993 (IAA), Stichting Bureau Examens voor het Beroepsvervoer (IAA), Stichting Examens Entityenvervoer (IAA), Commissie Zeevisvaartexamens (IAA), Commissie Stuurliedenexamens (IAA), Commissie voor de examens van scheepswerktuigkundigen (IAA), Examencommissie Certificaatloodsen (IAA), Bevoegde autoriteiten art. 3 Besluit Rijnvaartpolitiereglement 1995 (IAA), Bevoegde autoriteiten art. 2 Besluit Reglement Rijnpatenten 1998 (IAA), Commissie van deskundigen voor de Rijnvaart art. 2.01 Reglement onderzoek schepen op de Rijn 1995 (IAA), Exameninstanties ex Examenregeling frequentiegebruik (IAA), Participatiefonds gemeentelijke vervoerbedrijven (LEwST), Westerschelde Tunnelmaatschappij (LEwST).

Economic Affairs
Centraal Orgaan Voorraadvorming Aardolieproducten (LEwST), Gasunie (LEwST), Energiedistributiebedrijven (LEwST), Nederlands Instituut voor Vliegtuisontwikkeling en Ruimtevaart (LEwST), Nederlands Meetinstituut (LEwST and IAA), Nederlandse Onderneming voor Energie en Milieu (LEwST and IAA), Waarborg Platina, Goud en Zilver NV (LEwST and IAA), Centrale Commissie voor de Statistiek (IAA), Kamers van Koophandel en Fabrieken (IAA), Gastec Certification BV (IAA), Octrooiraad (IAA).

Agriculture, Nature Management and Fisheries
Hogere Agrarische Scholen (LEwST), Universiteit Wageningen (LEwST), Stichting tot ontwikkeling van agrarische onderwijskunde en scholing – Agrarisch Pedagogische Hogeschool (LEwST), Stichting Nederlandse Algemene Keuringsdient voor Tuinbouw (LEwST and IAA), Stichting Nederlandse Algemene Keuringsdienst voor Zaaizaad en Pootgoed voor Landbouwgewassen (LEwST and IAA), Stichting Bloembollenkeuringsdienst (LEwST and IAA), Stichting Centraal Orgaan voor Kwaliteitsaangelegenheden in de Zuivel (LEwST and IAA), Stichting Controlebureau voor Pluimvee, Eieren en Eiproducten (LEwST and IAA), Stichting Kwaliteitscontrolebureau voor Groenten en Fruit (LEwST and IAA), Stichting Kwaliteitscontrole Alternatieve Landbouwproductiemethoden (LEwST and IAA), Staatsbosbeheer

(LEwST and IAA), Faunafonds (LEwST and IAA), Bureau Beheer Landbouwgronden (LEwST and IAA), Commissie beheer landbouwgronden (IAA), Centrale landinrichtingscommissie (IAA), Grondkamers – incl. de Centrale Grondkamer- (IAA), Herinrichtingscommissie Oost-Groningen en de Gronings-Drentse Veenkoloniën (IAA), Reconstructiecommissie Midden Delfland (IAA), Commissie voor de samenstelling van de verplichte rassenlijsten (IAA), College voor de toetsing van bestrijdingsmiddelen (IAA), Raad voor het Kwekersrecht (IAA), Voedselvoorzieningsin- en verkoopbureau (IAA), Natuur- en Recreatiegebied De Grevelingen (IAA), Stichting Fonds Watersnood (IAA), Stichting Borgstellingsfonds voor de landbouw (IAA), Stichting Ontwikkelings- en saneringsfonds voor de landbouw (IAA), Stichting Ontwikkelings- en saneringsfonds voor de visserij (IAA), Kamer voor de binnenvisserij (IAA), Stichting examens vakbekwaamheid honden en kattenbesluit (IAA), Stichting registratie gezelschapsdieren Nederland (IAA), Stichting Nationaal Groenfonds (LEwST).

Social Affairs and Employment
College van Toezicht Sociale Verzekeringen (LEwST and IAA), Landelijk Instituut Sociale Verzekeringen (LEwST and IAA), Uitvoeringsinstellingen (LEwST), Sociale Verzekeringsbank (LEwST and IAA), Arbeidsvoorziening (LEwST and IAA), Stichting Nederlands Instituut voor Lifttechniek (LEwST and IAA), Stichting voor de Certificatie van Vakbekwaamheid (LEwST and IAA), Certificerende instellingen vakbekwaamheid en examen/opleidingsinstellingen Arbo- en kernenergiewet (LEwST and IAA), Stichting ter certificering van Arbeidshygiënisten (IAA), Certificatie instellingen Arbodiensten (LEwST and IAA), Stichting Silicose Oud-mijnwerkers (LEwST and IAA), Centrale Organisatie Instituut Werk en Inkomen (IAA), Uitvoeringsinstituut Werknemersverzekeringen (IAA), Raad voor Werk en Inkomen, Centra voor Werk en Inkomen, Vereveningsinstantie (IAA), Onderlinge Waarborgmaatschappij WAAV (IAA).

Public Health, Welfare and Sports
Destructor Rendac (LEwST), Centraal Administratiekantoor Bijzondere Ziektekosten (LEwST), College Tarieven Gezondheidszorg (LEwST and IAA), College Bouw Ziekenhuisvoorzieningen (LEwST and IAA), College Sanering Ziekenhuisvoorzieningen (LEwST and IAA), Stichting Uitvoering Omslagregeling WTZ (LEwST and IAA), Zorgverzekeraars AWBZ (LEwST and IAA), Ziekenfondsen (LEwST and IAA), Zorg Onderzoek Nederland (LEwST and IAA), Pensioen- en uitkeringsraad (LEwST and IAA), College voor Zorgverzekeringen (LEwST and IAA), Commissie Toezicht uitvoeringsorganisaties Zorgverzekeringen (IAA), College ter beoordeling van Geneesmiddelen (IAA), Commissies voor de gebiedsaanwijzing (IAA), Centrale Commissie voor mensgebonden onderzoek (IAA), Nederlandse Transplantatie Stichting (IAA), Instellingen ex art. 12 wetsvoorstel veiligheid en kwaliteit lichaamsmateriaal (IAA), Registratiecolleges en opleidingscommissies KNMG (IAA), Registratiecollege en opleidingscommissie NMT (IAA), Registratiecollege en opleidingscommissie KNMP (IAA), Stimuleringsfonds Openbare Geondheidszorg (IAA), Patiënten-

fonds (IAA), Stichting Hulpfonds Slachtoffers Bijlmerramp (IAA), Stichting Fonds Slachtoffers Legionella-epidemie (IAA), Stichting Rechtsherstel Indische Gemeenschap (IAA), Stichting Rechtsherstel Sinti en Roma (IAA), Commissie Algemene Oorlogsongevallenregeling (IAA).

Others
Appeal and industrial boards (IAA), advisory bodies (IAA), inspection services (IAA).