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**Decree of 28 January 2005 containing new rules on the funding of the court sector in connection with the introduction of an accrual budgeting and accounting system and the netting of output differences (Court Sector (Funding) Decree 2005)**

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We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

On the recommendation of Our Minister of Justice of 7 December 2004, Legislation Department, no. 5323045/04/06;

Having regard to section 97, subsection 1 and section 98, subsection 4 of the Judiciary (Organisation) Act;

Having heard the Council of State (advisory opinion of 6 January 2005, no. W03.04.0591/I); Having seen the further report of Our Minister of Justice of 21 January 2005, Legislation Department no. 5331152/05/6;

Have approved and decreed:

## **Chapter 1. General provisions**

### **Article 1**

The following definitions apply in this Decree:

- a) Act: the Judiciary (Organisation) Act;
- b) case: a legal proceeding that is to be dealt with or has been disposed of by a court;
- c) output: the total number of cases dealt with or disposed of;
- d) national prices: the amounts per case which are differentiated by product group and used to determine the output-related funding allocation to the court sector;
- e) local prices: the amounts per case which are differentiated by product group and court and used to determine the output-related funding allocation to a court;
- f) case category: a part of the output that is treated in the same way within a court category;
- g) product group: a number of connected case categories;
- h) court categories:
  - 1°. the district courts;

- 2°. the courts of appeal;
- 3°. the Administrative Court for Trade and Industry;
- 4°. the Central Appeals Court for Public Service and Social Security Matters.

## **Chapter 2. Support systems and models**

### **Article 2**

1. There is a system for measuring the output of the court sector. This system involves measuring the number of cases dealt with or disposed of by each court category and, within each category, by individual courts.
2. This is measured at the level of individual case categories, clustered into product groups.
3. The Council for the Judiciary regulates the definitions and models underlying the classification into product groups and case categories.
4. Major changes to the classification into product groups and case categories and to the underlying definitions and models require the permission of Our Minister.

### **Article 3**

1. There is a price measurement system for the court sector. This system involves allocating costs to numbers of cases dealt with and disposed of by all courts together and, on the basis of this figure, the individual courts.
2. This is measured at the level of the individual product groups.
3. The Council regulates the definitions and models underlying the price measurement.
4. Major changes to the definitions and models require the permission of Our Minister.

### **Article 4**

1. There is a system for measuring the workload of the court sector. This system involves measuring the workload of the court production staff by means of periodic time recording studies.
2. This is measured at the level of the individual case categories.
3. The Council regulates the method of periodic time recording studies underlying workload measurements.

4. The Council has the structure of the time recording studies and the manner in which the studies are carried out assessed by an external, independent expert.

#### **Article 5**

1. To measure the workload the Council periodically conducts comparative studies of realised price differences between courts, in addition to the time recording studies.
2. At the request of Our Minister or of its own volition, the Council conducts in-depth studies of specific elements of the realised price per case.

#### **Article 6**

1. The Council is to establish a committee to advise it on changes to the output, price and workload measurement systems and the structure of the comparative and in-depth studies referred to in articles 2 to 5.
2. The committee is to consist of representatives of the courts.
3. A representative of the Ministry of Justice is to attend meetings of the committee as observer.

#### **Article 7**

1. The Council and the courts must develop and manage a quality system. The quality of the organisation of the judiciary and, in particular, judicial performance are measured by reference to the system.
2. The Council has the structure of the quality system assessed by an external, independent expert.

#### **Article 8**

1. Our Minister must develop and manage a model for forecasting the inflow of cases. The purpose of the model is to forecast the inflow of cases at the courts on an objective basis.
2. The forecasting model must be developed and managed in consultation with the Council.
3. Our Minister must have the structure of the forecasting model tested by an external, independent expert.

### **Chapter 3. Allocation of funding by Our Minister to the Council**

## **Part 1. General**

### **Article 9**

The funds to be allocated annually to the Council for the combined activities of the Council and the courts equal the appropriation for the Council in the budget of the Ministry of Justice adopted for the relevant budget year.

### **Article 10**

The funding to be allocated to the Council comprises the following components:

- a) an output-related amount;
- b) an amount for court costs;
- c) an amount for other expenditure.

## **Part 2. The funding allocation for the Council**

### **Article 11**

The output-related funding allocation is determined by multiplying the national prices for the year concerned by the number of cases per product group included in the budget of the Ministry of Justice.

### **Article 12**

1. The national prices are determined for three successive years and included in the budget of the Ministry of Justice.
2. The prices are based on:
  - a) the price per product group realised in the past;
  - b) changes in the ratio of the numbers of cases per case category within the product group;
  - c) the results of the workload measurement referred to in article 4 and the additional studies referred to in article 5;
  - d) quality considerations based on information from the quality system referred to in article 7;
  - e) efficiency considerations.
3. Each year the prices are adjusted in line with general wage and price trends.

### **Article 13**

1. In its budget proposal for the year of implementation and the four subsequent years, the Council must base the estimate of the number of cases in each product group on the expected inflow of cases in the budget year, the work in progress at the start of the year of implementation and the desired level of work in progress at the end of that year.
2. The Council must apply the forecasting model referred to in article 8 to estimate the expected inflow of cases. Any differences between the data used by the Council in its budget proposal and those generated by the forecasting model must be explained in the proposal.
3. Where necessary, the Council must adjust the estimate of the expected inflow of cases to take account of changes to the court system.

#### **Article 14**

1. The funding for court costs is determined by multiplying the court costs per case by the number of civil and administrative cases included in the budget of the Ministry of Justice.
2. 'Court costs per case' means the realised court costs in civil and administrative cases in the year immediately preceding the budget year divided by the number of civil and administrative cases disposed of in the relevant budget year.
3. If the amount referred to in paragraph 1 is not sufficient, Our Minister must make additional financial resources available to the Council in order to defray the expenditure of the courts on court costs.

#### **Article 15**

1. The funding allocation for other expenditure equals the amount of the relevant appropriation in the budget of the Ministry of Justice.
2. The Council must include in its budget proposal a plan containing an estimate of the other expenditure for the budget year concerned, a description of the activities and their specific aims.
3. Recurring and non-recurring costs must appear in the estimate.

### **Part 3. Rules to be attached to the funding allocation**

#### **Article 16**

The rules to be laid down by Our Minister in respect of the annual funding allocation may relate

only to:

- a) the numbers of cases per product group to be handled by the courts together;
- b) aims to be achieved as set out in the plan referred to in article 15;
- c) implementation of the agreements made during collective bargaining.

#### **Part 4. Equity and netting of output differences**

##### **Article 17**

1. The equity of the court sector is determined by aggregating the equity of the courts and the agencies coming under the Council, as referred to in articles 36 and 39, paragraph 2, and the equity of the Council itself, as referred to in article 18.
2. Only the following may be included in the equity of the court sector in the statement of financial position:
  - a) an operating reserve;
  - b) a statutory reserve, i.e. a reserve as defined in article 2:365 of the Civil Code, paragraph 2 in conjunction with paragraph 1 (b), and article 2:390 of the Civil Code;
  - c) the undistributed surplus.
3. The aggregate of the operating reserve and the undistributed surplus of the court sector must not exceed five per cent of the average annual income of the court sector calculated over the last three years.
4. The equity of the court sector may not be less than nil.
5. Any operating surplus of the court sector is credited to its operating reserve, up to the limit referred to in paragraph 3. The Council must transfer the excess to Our Minister.
6. Any operating deficit of the court sector is debited to its operating reserve. If, in an exceptional case, this results in an equity deficit, this must be cleared by Our Minister and consultations must be held on the measures to be taken as referred to in article 21.
7. The Council requires the permission of Our Minister to perform activities for persons other than Our Minister, in exchange for financial consideration, if such activities have not been assigned to the court sector pursuant to a statutory regulation.

##### **Article 18**

1. The Council's equity consists of an operating reserve, a statutory reserve and the undistributed surplus.

2. The Council's operating reserve is intended to provide cover against the operating risks of the court sector as a whole.
3. Subject to article 17, paragraph 3, Our Minister may make an addition to the operating reserve of the Council, without consideration, in order to strengthen the Council's equity.
4. The Council may not accept funding in the form of a loan from parties other than Our Minister of Finance. Funding from other parties is added to the Council's operating reserve.

#### **Article 19**

1. The Council manages an equalisation account for the court sector.
2. The purpose of the equalisation account is to net differences between the agreed and realised output.
3. The equalisation account forms part of the Council's statement of financial position.
4. The funds in the equalisation account do not bear interest and are kept in a current account with the Government Accounts Division of the Ministry of Finance.
5. A positive netting debited to the equalisation account may not exceed the total amount available in the account.

#### **Article 20**

1. The output-related funding allocated to the Council under article 11 is increased or reduced if the number of case disposals by the courts per product group is higher or lower respectively than the amount included in the Ministry of Justice's budget.
2. The amount of the increase or reduction is determined by multiplying the number of extra case disposals or fewer case disposals respectively per product group by a price that is equal to 70% of the price per product group applicable for the year concerned.
3. An increase in the output-related funding referred to in paragraph 1 is included as income in the statement of financial performance of the Council and the courts, up to the limit referred to in article 17, paragraph 3, and is debited to the equalisation account of the court sector. If the increase is greater, the excess must not be debited to the equalisation account. The increase must not exceed the amount referred to in article 19, paragraph 5.
4. A reduction in the output-related funding referred to in paragraph 1 is included as an expense in the statement of financial performance of the Council and the courts, and is

credited to the equalisation account of the court sector.

## **Article 21**

In the event of a potential operating deficit that would cause the court sector to have negative equity, an operating surplus exceeding the limit referred to in article 17, paragraph 3, or a far-reaching change of circumstances that has demonstrable consequences for output, Our Minister and the Council must consult about the measures to be taken and, if necessary, adjust the output numbers of the courts and the national prices, without prejudice to article 17, paragraph 5, second sentence.

## **Part 5. Provision of information**

### **Article 22**

1. The Council must supply Our Minister with the information necessary for the performance of his duties relating to the funding of the court sector. This must in any event include:
  - a) data on the output-related funding, court costs and other expenditure as referred to in article 11, article 14, paragraph 1 and article 15, paragraphs 2 and 3;
  - b) price data, including the results of the workload measurement and comparative and in-depth studies and data on quality as referred to in article 12, paragraph 3;
  - c) data on case numbers, case inflows and work in progress as referred to in article 13;
  - d) data for the statement of financial position, including data on equity and the equalisation account as referred to in articles 17 to 19.
  
2. Our Minister and the Council must make agreements in an information protocol about the information to be supplied for funding purposes.

## **Chapter 4. Allocation of funding by the Council to the courts**

### **Part 1. Breakdown of funding allocated by the Minister**

#### **Article 23**

The Council must divide the output-related funding allocated by Our Minister, as referred to in article 11, into the following parts:

- a) an output-related funding allocation for the courts;
- b) a funding allocation for courthouse buildings;
- c) a funding allocation for specific expenditure for the courts;
- d) expenditure to be managed centrally by the Council.



## **Article 24**

The Council must divide the funding allocated by Our Minister for other expenditure, as referred to in article 15, into the following parts:

- a) a funding allocation to the courts for other expenditure;
- b) other expenditure to be managed centrally by the Council.

## **Part 2. The funding to be allocated to a court**

### **Article 25**

The funding to be allocated by the Council to a court comprises the following elements:

- a) an output-related component;
- b) a component for court costs;
- c) a component for courthouse buildings;
- d) a component for specific expenditure;
- e) a component for other expenditure.

### **Article 26**

1. The Council determines the output-related funding allocation to the court by multiplying the local prices applicable to the relevant year by the number of cases per product group agreed with the court.
2. The agreed number of cases referred to in paragraph 1 means the number of cases to be disposed of by the court itself plus the number of cases to be disposed of by other courts sitting at the court, less the number of cases to be disposed of by the court sitting outside its own district or region.

### **Article 27**

1. The Council sets the local prices.
2. The Council may set different prices for the individual courts on the basis of the results of the workload measurement and the comparative studies, as referred to in articles 4 and 5.
3. The differentiation in prices referred to in paragraph 2 may relate only to factors that cannot influence the courts.

### **Article 28**

1. The Council must apportion the amount of the court costs component referred to in article 10 (b) among the courts in accordance with the number of civil and administrative cases that

will be disposed of in the budget year.

2. At the request of the management board of a court, the Council must make additional financial resources available in order to defray the costs incurred by the court concerned in civil and administrative cases.

#### **Article 29**

The Council must apportion the amount of the courthouse buildings component referred to in article 23 (b) among the courts on the basis of their own estimates.

#### **Article 30**

1. The management board of a court may request the Council to allocate additional financial resources for specifically defined activities aimed at improving the organisation or procedure of the court or enhancing the legal quality of its work.
2. Such a request must in any event be accompanied by:
  - a) a project plan, and
  - b) a budget, unless this is not needed in order to calculate the amount.
3. Requests granted by the Council must be charged against the specific expenditure component referred to in article 23 (c).

#### **Article 31**

The Council must apportion the amount of the other expenditure component referred to in article 24 (a) among the courts on the basis of their own estimates.

### **Part 3. Rules to be attached to funding allocation**

#### **Article 32**

The rules to be laid down in respect of the annual funding allocation by the Council may relate only to:

- a) the case numbers to be realised in the year concerned, broken down into case categories;
- b) the aims to be achieved in the year concerned by the funding allocations referred to article 25 (c), (d) and (e);
- c) the implementation of the agreements made during collective bargaining in the year concerned.

## **Part 4. Other rules**

### **Article 33**

The management board of a court is obliged to cooperate in the measurements and studies referred to in articles 2 to 5 and 7.

### **Article 34**

The funding allocated to a court under article 28 for the court costs in civil and administrative cases may be used by the management board of the court only to meet these costs.

### **Article 35**

The management board of the court must supply to the Council:

- a) the data referred to in article 22, paragraph 1;
- b) the data needed by the Council in order to fulfil the agreements in the information protocol referred to in article 22, paragraph 2;
- c) information about numbers and categories of cases of the court to be disposed of and categories of cases to be disposed of by other courts sitting at the court, and the numbers and categories of cases to be dealt with by the court sitting outside its own court district or region.

## **Part 5. Equity and netting of output differences**

### **Article 36**

1. A court's equity consists of an operating reserve, a statutory reserve and the undistributed surplus.
2. The operating reserve is intended to provide cover against the operating risks of the court.
3. The aggregate of the court's operating reserve and undistributed surplus may not exceed five per cent of the average annual income calculated over the last three years.
4. The court's equity may not be less than nil.
5. In accordance with the provisions of paragraph 3, the Council may make an addition to the court's operating reserve, without consideration, in order to strengthen the court's equity.
6. The court is not permitted to accept funding allocations in the form of a loan from parties other than Our Minister of Finance. Applications must be submitted through the Council.

Contributions from others must always result in an addition to the court's operating reserve.

7. Any operating surplus of the court must be credited to its operating reserve, up to the limit referred to in paragraph 3. The excess must be added to the Council's equity.
8. Any operating deficit of the court must be debited to its operating reserve. If, in an exceptional case, this results in an equity deficit, this must be cleared by the Council and consultations must be held on the measures to be taken as referred to in article 38.
9. The management board requires the permission of the Council to perform activities for parties other than the court sector itself or Our Minister, in exchange for financial consideration, if such activities have not been assigned to the court pursuant to a statutory regulation.

### **Article 37**

1. The output-related funding allocated to the court under article 26 is increased or reduced if the number of cases disposed of by the court per product group is higher or lower respectively than the amount agreed with the Council for that year.
2. The amount of the increase or reduction is determined by multiplying the number of extra case disposals or fewer case disposals respectively per product group by a price that is equal to seventy per cent of the average price per product group applicable for the year concerned, which the Council applies for the individual courts.
3. An increase in the output-related funding as referred to in paragraph 2 must be included as an item of income in the statement of financial performance and must be debited to the equalisation account of the court sector referred to in article 19. If the netting for the court sector exceeds the amount that is available on the basis of article 19, paragraph 5, the increase for each individual court must be a part of the amount available on the equalisation account proportionate to the increases calculated pursuant to paragraph 2.
4. A reduction in the output-related funding as referred to in paragraph 2 must be included as an expense in the statement of financial performance of the court and must be credited to the equalisation account of the court sector.

### **Article 38**

In the event of a potential operating deficit that results in a court having negative equity or an operating surplus that exceeds the limit referred to in article 36, paragraph 3 or in the event of a far-reaching change of circumstances that has demonstrable results for the output, the Council

must consult with the court concerned about the measures to be taken and together they must, if necessary, adjust the agreements made about output numbers and local prices, without prejudice to article 36, paragraph 7, second sentence.

## **Chapter 5: Other provisions**

### **Article 39**

1. The budget system to be applied by the Council, the courts and the agencies coming under the Council with effect from 2005 is the accrual budgeting and accounting system.
2. The following apply *mutatis mutandis* to the Council, the courts and the agencies coming under the Council:
  - a) chapter 6 of the 1997 Regulations on Ministerial Budget Accounts;
  - b) the Borrowing and Deposit Facility (Agencies) Order 2003, provided always that the Council makes applications partly on behalf of the courts and the agencies coming under the Council.

### **Article 40**

Article 36 applies *mutatis mutandis* to the agencies coming under the Council:

### **Article 41**

The court costs incurred by the courts in criminal cases are borne by the Board of Procurators General.

### **Article 42**

1. Our Minister must inform the Council each year what other rules must be observed in preparing and organising the Council's budget proposal.
2. Our Minister and the Council must make further agreements in a budget protocol about the procedure to be followed in preparing, implementing and reporting on the budget.

## **Chapter 6. Transitional and concluding provisions**

### **Article 43**

The Court Sector (Funding) Decree is repealed.

### **Article 44**

[Amends the Judicial Officers (Training) Decree]

#### **Article 45**

[Amends the Judicial Officers and Officers of the Bureau of the Council for the Judiciary (Exercise of Legal Status Powers) Decree]

#### **Article 46**

1. This Decree enters into force on the day following the date of publication of the Bulletin of Acts and Decrees in which it appears and retroactively from 1 February 2004.
2. The Court Sector (Funding) Decree remains applicable to the funding of the court sector in 2004.
3. Articles 2 and 3 of the Departmental Agencies (Equity Rules) Order 2001 apply *mutatis mutandis* to the Council, the courts and the agencies coming under the Council in respect of the preparation of an opening statement of financial position on 1 January 2005.
4. The limit of five per cent referred to in article 17, paragraph 3 and article 36, paragraph 3 must be calculated for 2006 by reference to the 2005 income. For the year 2007 it must be calculated by reference to the average income of 2005 and 2006.

#### **Article 47**

This Decree may be cited as the Court Sector (Funding) Decree 2005.

We order and command that this Decree and the explanatory memorandum pertaining to it be published in the Bulletin of Acts and Decrees.

The Hague, 28 January 2005

Beatrix

Minister of Justice  
J.P.H. Donner

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Minister of Justice  
J.P.H. Donner