

Session year 2013-2014

33 846 **Adoption of an Updated System of Public Library Provisions (Public Library Provisions System Act)**

No. 3 **EXPLANATORY MEMORANDUM**

General Part

1. Reason

With 4 million members, 100 million lendings, and an annual turnover of approximately EUR 600 million, the Dutch Public Library is a well-used and widely appreciated social provision. The Public Library is the public gateway to information and culture, and plays a major role in the promotion of reading and the reading culture as well as in the wide circulation of literature. The Dutch library field comprises some 160 local or regional library organisations, approximately 10 provincial organisations, 14 specialised libraries¹, and several nationally operating organisations, such as the National Library of the Netherlands (KB), the Sectoral Body for Public Libraries (SIOB), the Public Libraries Society (VOB), and the Portal of the Dutch Public Libraries (Bibliotheek.nl).

The existing legal framework for the public library services in the Dutch Cultural Policy (Special-Purpose Funding) Act (Wsc) has become strongly obsolete. It no longer offers an adequate basis for the existing library services practice or for the digital developments in the library sector. Therefore, the 2010-2012 Library Charter entered into between the Central Government, the Association of Public Municipalities (VNG), and the Association of Provincial Authorities (IPO) on 17 December 2009 announces an update of the legal framework for the public libraries.² The outlines thereof are as described in the Library Legislation Update Outline Letter dated 7 December 2011.³ This bill is to implement that Outline Letter.

¹ "Plus" or Academic support (WSF) libraries.

² Government Gazette 2010 no. 2061 dated 12 February 2010.

³ Parliamentary Papers II 2010-2011, 28 330, no. 51.

Insufficient coherence in the library system

The legal framework for the public library services is the Wsc.⁴ The library provisions in the Wsc are remnants from previous acts that have been transferred from the 1975 Public Library Services Act to the 1987 Social Welfare Act, and subsequently, in 1994, to the Wsc. The provisions relate to the structure of the library system from local and provincial networks and to exemption from membership fee for youths. The contents of these provisions have been worded as a promotion responsibility for the governments. They only give limited direction to the structure and the performance of the library system.

The existing system of public libraries with a substantial number of players in a decentralised structure shows insufficient coherence. Furthermore, KB, a major player in the Dutch library landscape, has no formal relation to the public libraries. As a result, the effectiveness and innovative power of the sector are too restricted, especially given the speed and impact of the digital developments.⁵ The lack of coherence has been covered in several covenants and administrative agreements. Since 2001, for that purpose, successively the Library Innovation Umbrella Covenant (2002-2004), an Addition to the Umbrella Covenant (2005-2007), and the Library Charter (2010-2012) have been entered into. Based on these arrangements, major results have been achieved, such as the set-up of basic libraries and the development of the digital library. The instrument of administrative agreements is, however, inadequate for the steps needed in the long run.

Social function of library services not defined

In the transfer from previous acts, the existing library provisions have lost their context. Consequently, inter alia the social function of the public library - which should form the basis for policy - is no longer defined. Until the turn of the century, the public library services saw a long period of continuity and stable growth. During that period, in actual practice there was social consensus as to the role and manifestation of the public library. The lack of a legal definition of the public library and its social function was, therefore, not seen as a loss. New and drastic developments have made it necessary to rethink and redefine the social function of the public library. The local decision-making process on the budgets for the public library services increasingly raises the question as to the shape of the social role of the public library. The set-up of the digital library makes this issue all the more topical. Policy documents on library innovation have provided guidance in this respect, but those documents do not have any formal reference point.

Set-up of the digital domain fundamentally different and not yet provided for

In all layers of society, supply and use of print are decreasing, while the digital supply and use are strongly growing. Against this background, the public library sector, with the support of the Minister of Education, Culture and Science (hereinafter: the Minister), have been building the digital library over the past few years. The digital library is to ensure that the public libraries can continue to fulfil their public duties in the digital domain as well. In the long run, physical use is expected to decrease, while

⁴ Wsc, Chapter IVA, Sections 11a and 11b.

⁵ Library innovation Advisory Committee, *Innovatie met effect*, 2008.

digital use is expected to grow even further. This bill structurally provides for the presence of the public libraries in the digital domain.

The existing library provisions date back to the mid nineteen eighties. In those days, the public library only had a physical appearance (“a building filled with books, newspapers and magazines”). In the existing situation, the library services are hierarchically set up along geographic lines (local - provincial - national). The structure of the digital library is, however, essentially different from the physical library: a flat network structure that is entirely unrestricted by geographic and territorial boundaries. The existing administrative and legal framework cannot be used for this purpose. The Wsc merely imposes on governments the obligation to promote networks between libraries, but a good and structural organisation of the digital activities cannot be enforced. The digital activities of the public library and payment thereof must be clearly shaped. Covenants have proved to be inadequate in this respect because of their temporary and non-mandatory nature. The consequences of the lack of an up-to-date legal framework are very well visible in the digital domain. Various organisations in library circles are working on a variety of digital public libraries. The major players are the joint public libraries through Bibliotheek.nl, KB, and the Digital Library of Dutch Literature (DBNL). In addition, there are a large number of smaller digital initiatives, such as sites of old Dutch editions, old children's books, and educational applications. All these digitisation projects are financed by different public sources and lead to incoherent results. The fragmentation and individual presentations on the different websites make the results relatively unknown and difficult to trace for the general public and for educational institutions. Government resources are fragmented and insufficiently effectively deployed. These conclusions were reached earlier in the opinion entitled *Bibliotheekinnovatie 2009-2012* by the Council for Culture and in the opinion entitled *Innovatie met effect [Innovation with Effect]* by the Library Innovation Advisory Committee.

2. Basic principles

When updating the legal framework for the library services, the following basic principles have been used:

The public values of the public library

In the early 20th century, the public library was set up in a time of information scarcity. In social response thereto, public libraries built up broad collections of physical information carriers that could be temporarily made available to members. With their wide audience reach and general accessibility, the public libraries play an important role in the dissemination of information, knowledge and culture. The government involvement in the public library services is generally based on Article 7 of the Constitution, in conjunction with Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the Universal Declaration of Human Rights (UDHR). These articles safeguard the freedom of speech, thus entailing the possibility for every citizen to take cognisance of information. In its *Library Manifesto* Unesco translated these general principles to duties for the governments and the library sector.⁶ These general provisions have been reflected in the existing library provisions. The parliamentary history of these provisions positions the public library as the public gateway to information, education and culture, the public library

⁶ *Unesco Library Manifesto, a gateway to knowledge*, 1994.

fundamentally distinguishing itself from other providers of information by working on the basis of a number of public values: reliability, independence, authenticity, multiformity, and accessibility. These public values apply both to the physical and the digital domains.

The digital domain has an information abundance rather than scarcity. Therefore, in the digital library, the public values referred to above will be shaped differently. In the digital domain, the duties of the public libraries focus on public-friendly, structured provision, in the right context, of digital forms of information and culture, with a test for reliability, independence, authenticity and multiformity. Part thereof is enhancement of media knowledgeability. The digital library fulfils these duties for the general public and for the educational sector, thus contributing to the knowledge economy. Since information is increasingly available in digital form only (“born digital”), the absence of the public library in the digital domain would, in the long run, reduce access to information, education and culture for the current library users.

The Dutch public libraries jointly manage a collection of 30 million items circulating among 4 million members every year through 100 million lendings. Thus, the public libraries are a force to be reckoned with in the promotion of reading and the reading culture as well as the wide circulation of literature in the Netherlands. The libraries fulfil this role in cooperation and coordination with organisations of authors, publishers and the book selling industry, thus contributing to the vitality of Dutch language and culture. This role is all the more important because the Dutch language is a relatively small language which, from a European perspective, covers a relatively small language region.⁷

The social functions of the public library

There is currently no statutory description of the functions of the public library. Through the Klein motion dated 17 December 2012, the Lower House raised awareness in respect of the various functions of the public library.⁸ In library circles, there is consensus on five functions. These functions were adopted by the library sector and the Association of Public Municipalities (VNG) in 2005, and are still considered to be up to date. These five functions are: providing knowledge and information through the lending function (1), offering training and education opportunities (2), promoting reading and introducing members to literature (3), introducing members to art and culture (4), the library as a place for meeting and debate (5).⁹ The first three functions - also referred to as “reading, teaching and informing” - are traditionally at the heart of the library services. The public library services practice shows that the functions “art and culture” and “meeting and debate” are gaining importance, while that of the classic lending function is decreasing. For example, many libraries are developing into meeting places for students with study places and study materials. In regions where the facilities level is under pressure, the meeting function is also becoming increasingly important. The three classic library functions “reading, teaching, informing” gain substance and public value when combined with the functions “art and culture” and “meeting and debate”. This gives the collections of public libraries more relief and wider use through

⁷ In Europe, Dutch is the mother tongue of some 23 million persons.

⁸ Parliamentary Papers II 2012-2013, 33 400 VIII, no. 92.

⁹ The functions are derived from the Basic Library Guideline of VOB and VNG, 2005. The Central Government, IPO and VNO have taken these functions as the basis for the Library Charter dated 17 December 2009.

meetings with authors or through the connection of literature with other expressions of art and culture. The bill defines a public library and offers the physical library room to develop, depending on the local needs and possibilities. Therefore, the bill is based, also in response to the opinion by the Council for Culture, on five library functions. A restriction to the three classic functions “reading, teaching, informing” would be too much of a limitation of the framework of the public library in its current form. To avoid any misunderstandings: a place where there are only debates or lectures by authors is, of course, not a public library.

The social functions of the public library apply irrespective of its manifestation: physical or digital. For example, in the digital domain, the function “meeting and debate” may take the form of online communities. Given the decentralised nature of the library policy, municipalities are largely free in the way they shape the social functions. In actual practice, many different forms can be seen. These functions are fulfilled on the level of a library organisation rather than on the level of individual library locations. So, not every library location has to fulfil all five functions. The only condition is that the organisation as a whole fulfil all functions, one way or another. A very common form is a central location with branches in neighbourhoods or in neighbouring municipalities. Furthermore, library functions may be organised in cooperation with other provisions or in a shared accommodation. Examples are the *kulturhus*, the library as part of the community school or of a cultural centre.

A decentralised system with a strong network

On a decentralised level, the core of the library system is the responsibility of the local library organisations and the municipalities. Local libraries work together in a network. That is where the strength of the Dutch library system lies. This bill is to reinforce the network structure of the library system.

The public library and the public domain

The public library services are largely funded out of public resources from municipalities, provinces and the Central Government. The system is set up on a decentralised basis with many players. As a result of the current fragmentation in the field, various players in the public domain operate side by side and sometimes even in mutual competition. At more or less regular intervals, important innovations developed within the public domain end up in the private domain. Efficient deployment of government resources requires a clear separation between the public and the private domains, and within the public domain a clear allocation of duties among the various players. In view of the foregoing, the availability of products developed with public resources must be guaranteed by the acquisition of the related intellectual property rights. A clear distinction between the public and the private domains may prevent disproportional market disruption through subsidised activities in a market in which private suppliers are active as well.

The physical and digital library are inseparable

Physical and digital media differ in many respects: in terms of technology, user options and method of distribution. In this bill, however, both are public sources of information, education and culture. Therefore, for purposes of this bill, the physical and the digital library are inseparable. The performance of the digital library and the physical library mutually reinforce each other.

Future-proof

Digitisation is the key driving force in the developments in the public library. The impact of digitisation is so great that several essential elements need to be arranged in this respect. Meanwhile, the developments in the digital world are in full swing. This means that the legal framework should offer sufficient room for new developments. Therefore, the regulations are limited to what is absolutely necessary to safeguard the digital activities of the public library.

Caribbean Netherlands

With effect from 10 October 2010 the islands Bonaire, St. Eustatius and Saba acquired the status of public entity within the Kingdom of the Netherlands. The provisions of this bill also apply to these islands, with the exception of those elements that do not have any added value or are impracticable in the specific situation of these islands. The island authorities have received a non-recurring subsidy to raise the level of the library services. In light of legislative reluctance for the public entities, it is noted that the bill imposes on the authorities of the public entities only the obligation to take responsibility, together with the other governments, for the library system and, if necessary, to consult. No requirements are set for libraries in the public entities other than those already attached to the non-recurring start-up subsidies referred to above.

3. The core of the bill

Based on the reasons and principles described above, the new library legislation will focus on the following areas.

One network of library organisations

The Dutch library organisations differ in scale, in size of territory, and in level of administrative control (local, provincial, national). They are, however, not entirely separate organisations. They are connected in a network as parts of a greater whole. This can best be felt in 'Inter Library Loans': if a title is unavailable in one library, it can be supplied out of the collection of another. This way, in principle, the entire collection of all Dutch public libraries is available to members of a local library. Working together in a network is an essential characteristic of the Dutch library system and a central element of this bill. The bill defines which public library provisions form part of the network and identifies the functions to be fulfilled within that network. This includes the use of a common catalogue, participation in Inter Library Loans, and working based on a joint collection plan. Since all public libraries participate in one digital infrastructure, the digital library reinforces the strength of the network. The participants in the network can increasingly perform and supply as a joint effort. It would be advisable that, in the long run, university libraries will participate in this network as well. KB will explore this collaboration.

KB as the national library in the network

The current function of KB in the library system is that of the national library with a - mainly - scientific duty. In addition, this bill provides for a central role for KB in the Dutch system of public libraries. The purpose is to reinforce the coherence within the

system. To that end, KB will be allocated a number of new duties and powers. An important new duty is the maintenance of the national digital public library. For a further explanation of the role and duties of KB, refer to paragraph 5.2.

The physical library

The public library consists of a physical and a digital component. The physical library is a local responsibility. The physical public library comprises everything relating to the collection, management and lending of physical media.

The digital library

The digital library is the place and time independent central public access to digital information in primary and in adapted form. For reasons of efficiency, the digital library is implemented on a central level and is a responsibility of the Minister. This bill intends to undo the fragmentation in the digital domain and to increase the use value for the public. For that purpose, this bill combines all digital activities of the public libraries, KB and DBNL in KB. These are the digital activities for the general public and include both infrastructure and content. These duties will be fulfilled by KB. Chapters 4 to 7 work out these subjects in further detail.

4. The allocation of roles among the governments

In the existing legal framework of the Wsc, three governments share the responsibility of the library system. The municipality is responsible for the local library services, the province for supporting that, and the Central Government for the system as a whole. The focal point is on a local level. This three-way split is maintained in this bill, but is updated based on the developments (Chapter 1) and principles (Chapter 2) described above and tightened on certain points. The governments will share the responsibility for the system as a whole, and within that system each of the governments will have a specified responsibility.

The responsibility of the Minister

This bill codifies the arrangements made in the Library Charter regarding the duties of the Central Government. These are general system responsibility, the responsibility for the national infrastructure of the digital library, the funding of e-content, and the provision for persons with print disability. These duties and responsibilities and the necessary powers in that respect are allocated to KB. Through the funding of KB and the four-year institution plan, the Minister will control the way in which KB fulfils these duties on outlines.

The municipal duties

The Municipality is responsible for the local library services. This responsibility relates to the availability, scope and quality. Local choices in that respect determine the funding level. Statutory requirements as to funding levels - for example by way of a required municipal contribution per resident - are disproportional to the decentralised nature of the library services and the general lines of the successive Administrative Agreements between the Central Government and the other governments. As a result of the central organisation of the digital library, the local

responsibility mainly regards the physical library and in the digital domain only specific local applications. This means a change in duties for local libraries and municipalities.

The provincial duties

The provinces and the provincial support institutions have played an important role in the process of library innovation in the period of 2002-2007. In that period, the emphasis was on improvement of the quality of the physical library by upscaling. This was done through the formation of 'basic libraries', in which smaller library organisations merged into larger organisational units. These activities have been completed. This affects the role of the provinces and the provincial support institutions for the public library services. In addition, in the digital domain, a tier between central and local level is no longer self-evident. The geographic organisation does not play any role here. The Council for Culture advises, inter alia based on these considerations, that the provincial level be removed and the supporting duties be organised on a national level. This is consistent with the administrative principle that "no more than two tiers of government are responsible for one policy area". It has been considered whether it is possible to remove the provincial level and to organise necessary supralocal duties on a national level. It has been opted not to do so for the following reasons. Provincial support institutions have been working on a process of collaboration and merging for several years. As a result, the number of provincial organisations is expected to be reduced from 12 to approximately 5, which will make the organisation of the supralocal support more efficient. This bottom-up process is preferred over a large-scale, statutory reorganisation that should lead to one national support organisation for the physical domain. Moreover, a transfer of provincial duties to another administrative level, other than for the withdrawal from the municipal fund for the central purchasing of e-content, cannot be translated on a one-on-one basis into a withdrawal from the provincial fund, since various provinces fund expenses for provincial library services from resources that are in no way whatsoever earmarked for the library services. This bill maintains the provincial role, yet restricts it to those areas where there is a clear added value. This is supralocal service in the physical domain, such as innovations and Inter Library Loans. There is room for customisation in shaping these functions.

5. A network of library organisations

The existing library legislation contains a number of provisions on the network structure. These provisions are based on a network of physical libraries and identify the activities to be performed in the context of that physical network. This bill reinforces the network nature of the Dutch library system and is based on a single network in which all public library provisions - both physical and digital - work together. These are public libraries funded by municipalities, the provincial support institutions funded by the provinces, and the Central Government-funded national digital library.

The network of public library provisions works together as a whole, serving the joint users of these libraries. This requires that they at least use a common catalogue and participate in Inter Library Loans as well as in the national digital infrastructure. Their collections jointly constitute the Netherlands collection. The building of their

collection is based on a joint collection plan. In addition, they organise cooperation with, and support by, the educational sector.

5.1. Activities within the network

National library catalogue

All participants in the network use one single common catalogue. As a result, all materials of all the participants in the network are available to all library members. That collection comprises both physical and digital materials, thus shaping the concept of One Netherlands Collection.

Inter Library Loans

All materials of all libraries are available to a member of a library in the network. Loans by other libraries are made possible by the Inter Library Loans (IBL) system. IBL relates only to physical works. IBL also exists in the current library legislation, in Section 11b of the Wsc.

Joint collection plan

Based on their public values, libraries aim to build representative collections and meeting the demand of the members to the extent possible. At the same time, not every library needs to have every work in its own collection. Against this background, libraries build their collections. On balance, the Dutch library collection is the result of the individual decisions of local libraries, provincial support institutions and specialised libraries. Balanced and efficient building of the collection requires sector-wide coordination based on a common framework. This is not the case right now. The joint collection plan fills this gap. The purpose of the collection plan is to create a common framework for collection building by the participants in the library network. The plan describes the principles for collection building, without prescribing the individual titles that individual libraries should purchase. That is the responsibility of the library organisations themselves. Subjects of the collection plan include: the extent to which individual libraries, either in themselves or in a larger context, meet the local demand, and the representativeness of the collection of the supply of works published in the Dutch language region. KB is responsible for preparation and adoption of the plan. The plan will be prepared in cooperation between the participants in the library network. The current transition, in which the number of digital media is increasing and the number of physical media is decreasing, contributes to the importance of a collection plan. For example, for titles that are available in digital form, fewer physical copies will be required. The collection plan offers the possibility to approach the physical and digital collection as a whole. Media costs represent a substantial part (approximately 15%) of the expenses of the public libraries. After staffing and accommodation costs, this is the third expense item in the budget. There is much to gain for the users as well as for the libraries if libraries mutually make arrangements as to the purchase of media.

Common digital infrastructure

Working together as a network in technical terms requires participation in a common digital infrastructure. Essential elements are: the common catalogue, the central

collection of data on the users and the use, and a website based on standard specifications.

Standard members' administration and general conditions

Working together as a network requires libraries to organise their members' administration in a standard manner and to use up-to-date general conditions. The bill expects the library organisations to arrange these issues jointly. This also supports the intention of the library sector to come to a single national library card.

Support to training and education

Libraries fulfil their functions for the individual members, but also for social organisations, for example in the field of education and culture. This way, programmes for the promotion of reading, fighting illiteracy, and media knowledgeability are carried out. In actual practice, the cooperation is mostly shaped on a local and regional level.

5.2. KB as the national library in the network

KB is the national library with an academic duty. It is the largest library organisation in the Netherlands. With some 300 employees and an annual budget of approximately EUR 50 million, KB fulfils national duties, such as the Deposit Library for Dutch printed and digital publications, the Dutch bibliography and - in the same context - preservation, management, documentation and provision of national cultural heritage in the field of text. In addition, KB promotes the cooperation between libraries and acts as the centre of expertise for digitisation, digital archiving and preservation. Furthermore, KB does research and development for the provision of academic information and acts as the international contact for libraries. In line with these duties KB has formulated a digital agenda. Its priorities include the granting of access to everything published in and about the Netherlands, enhancement of the national digital information infrastructure, maintenance, presentation and reinforcement of digital collections, and safeguarding sustainable storage of digital information. This bill connects KB with the system of public libraries, giving it a central - and on some points managing - role. In addition to the existing academic duties, as described in the Dutch Higher Education and Research Act [Wet op het hoger onderwijs en wetenschappelijk onderzoek (WHW)], KB will be given new duties in the following areas:

- a. maintenance of the national digital library;
- b. performance of national system duties for the public library services;
- c. arranging the reading provision for persons with print disability.

The existing duties that are currently carried out by various organisations will partly be coordinated in KB. This reorganisation of duties is based, inter alia, on various opinions by the Council for Culture on the structure and management of the library system. In addition, there will be new duties and powers, that will help increase the coherence and efficiency in the system. These are the joint collection plan, the data exchange, the adoption of the rates for the digital library, and the possibility of providing subsidies.

KB will be responsible for, and adopt, the joint collection plan. Its contents will be prepared in consultation with the other public library provisions. Subsequently, the local libraries and provincial support institutions will be bound by this plan for their collection policy. For the purpose of the national catalogue, library organisations will be required to provide KB with data on the collection (possession and availability), and KB will be authorised to set further rules for library organisations on the data concerned and the way in which they are provided.

The foregoing powers will give KB public authority. This public authority will be necessary to effectively manage the network of public library provisions and to promote a certain degree of unity within the network. As discussed above, KB has specific expertise in the field of libraries, digitisation and innovation. This bill is the first to create statutory provisions for the national library and the management of the network of public library provisions. It comes with powers to safeguard the structural organisation and effectiveness. Both the maintenance of the national digital library and the management of the network will directly or indirectly impact the content of the library services. It is important that the content of the library services (the information that any citizen can take cognisance of through a public library provision) is created independent of political decisions, inter alia in view of the role of the public library in terms of freedom of speech. That is why it has been opted to impose the responsibility for the national digital library and the management of the network, and to confer the associated powers, on KB rather than on the Minister.

Currently, KB is a non-departmental public body governed without any public authority. This bill will make KB a non-departmental public body with public authority. Therefore, the bill also provides for KB being covered by the scope of application of the Dutch Non-Departmental Public Bodies Framework Act [Kaderwet zelfstandige bestuursorganen]. For a further explanation of the application of that Framework Act, please refer to the explanation to Section 24.

5.3 The availability of data

Working together as a single library network requires the collection of the catalogue data, the possession data and information on the availability of materials at a central point: the national digital library. Without this obligation, the national library catalogue and the Inter Library Loans cannot perform properly. The data are provided to KB, which sets rules as to the nature and the method of provision of such data. Each individual library is responsible for the provision of its own data.

For the library sector and for the subsidy providers it is important to have an insight into performance. For that purpose, participants in the network provide data on the collection, on use and users, and on staff and finance. These are data that are relevant to the development of the network and that serve as policy information.

Within the frameworks outlined in this bill, the types of data that are concretely to be provided for the purpose of development of the policy will be worked out in further detail in Ministerial Regulations. The bill provides in this respect that none of these data may be personally identifiable by users or by staff.

5.4 Access and membership

As described in Chapter 2, this bill is based, inter alia, on the principle that every resident of the Netherlands should have access to information and culture. For this bill, this means that every resident of the Netherlands should be able to use the physical and/or digital services of the public library.

In actual practice, two forms of library use can be distinguished: use as a visitor and use as a customer. Visitors can read books, newspapers and magazines on site, in the public area of the library building, without any lending taking place. This is open to everyone. It requires no formal relationship between the visitor and the library. As soon as a work from the collection is being lent, the relationship becomes less loose, and an agreement between the customer and the library is required. This legal relationship between the customer and the library is commonly referred to as the "membership". Formally speaking, there are "registered users" rather than a "membership" or "members", for the public library is not an association. For practical reasons, however, the bill will link up to the common terms of "member" and "membership".

Just as the physical library, the digital library can also distinguish between free use and use that requires registration. The digital library comprises copyrighted and non-copyrighted works and services. The non-copyrighted works and services are freely accessible to anyone, anywhere in the world. Access to copyrighted works and services requires a user registration. Anyone who is registered as a resident of the Netherlands may be registered as a user of the digital library. This does not require a membership of a physical library. The number of members of the physical library may decrease in favour of the number of members of the digital library. This disadvantage does, however, not outweigh the disadvantages for the user of a compulsory link to a membership. For, in addition to the existing library members, the digital library will attract a new target group. This is a group that is interested in reading and borrowing e-books, but does not want to go to the local library or pay for the physical supply. If the membership was linked, this group would never be reached. This user can, however, be kept up to date through the digital library on the location and activities of the local library, which would increase the chances of success of a later visit or membership. For a user who wishes to be a member of both the local and the digital library, this is, of course, possible as well. The membership of the Dutch public library, thus, has a total of three variations: physical member only, digital member only, and physical and digital member combined. The library sector intends to come to a single national library card to overarch these different forms of membership. The provisions on access and membership have been worded such that they offer the sector the room to realise such a library card.

In principle, only residents of the Netherlands or the Caribbean Netherlands can become registered users of the digital library. This restriction is necessary to avoid copyrighted content that is purchased for use by Dutch library members from being purchased worldwide and used without limitation. Use by a larger group than the members of the Dutch public library could undermine the business models of the library and the publisher.

The membership regulations are in accordance with the European law, since every resident can become a member, irrespective of their nationality. The membership regulations make it possible for the Minister to give other groups of private individuals the option to become members as well. This extension regards Dutch

nationals abroad, foreign students of the Dutch language, and Flemish residents. For purposes of the Dutch language, there is cooperation with Flanders in the Dutch Language Union. This has resulted, inter alia, in the digital collection of Dutch literature of DBNL. Opening up the membership to new groups requires a proper analysis of licences and implementability. In this respect, one may also think of restrictions on access to certain digital works or higher rates.

Youth membership fee

The existing library legislation contains a provision exempting youths up to the age of 18 from paying a membership fee for the use of the physical library. The purpose of this provision is to bring youths into contact with reading, literature and culture without any access thresholds. The Municipal Executive may decide to make an exception to this rule and levy membership fees from youths. In such event, the membership fee may not exceed 50% of the adult membership fee. Where youth membership fees are levied, this is often done from the age group of 16/17. Municipalities that levy youth membership fees often see this as an instrument to get used to the costs of services. In actual practice, the majority of municipalities and libraries exempt youths from paying a membership fee. Against this background, the introduction of an overall and unrestricted obligation to exempt youths from paying a membership fee is too severe an administrative instrument. Therefore, the bill maintains the existing situation.

It has been considered to make the same provision of exemption for youths from paying a membership fee for the digital domain as is used for the physical domain. It has been opted not to do so for the following reasons. Physical works are lent on the basis of a restriction of the public lending right. This means that public libraries can lend physical works without the prior consent of the copyright owner. This regime does not apply to digital works (see also Chapter 7). Therefore, lending of e-content requires agreements with publishers. These agreements are expected to be based on a certain amount per lending. A limited amount is available for the purchase of e-content. If youth members could borrow all e-content free of charge, this could take up a disproportionately large amount of the budget for e-content. Furthermore, the free provision of e-content could damage the developing market for e-books. When determining the rates for use of e-content by youths, policy objectives, such as the promotion of reading and the introduction to literature and culture, could be taken into account. The Minister can make arrangements on this subject with KB.

6. The physical library

In addition to the subjects relating to the physical library and those applicable to the system as a whole, this bill also sets specific rules for Inter Library Loans and the support of local libraries by provincial support institutions. For the latter subject, reference is made to the explanation to the provincial role in Chapter 4.

Inter Library Loans

Inter Library Loans are an essential link in the performance of the physical library. They are a supralocal activity. Based on this bill, the implementation of Inter Library Loans in terms of logistics is a provincial responsibility. That is in line with actual practice. In addition to the logistics services, Inter Library Loans also includes the

provision of works to members of other libraries and the filing of requests to that effect.

7. The digital library

This bill structures the activities of the public library and a number of related parties in the digital domain.

One digital library for the general public

There is one Dutch digital library for the general public in which in any event the digital activities of the public library sector, KB and DBNL are combined. This digital library gives access to Europeana, the collection of the European digital library. The digital library comprises two elements: the infrastructure and the content. The digital library comprises both copyrighted and non-copyrighted content. The non-copyrighted content is freely available to everyone.

A process of several years has brought together all approximately 160 library organisations into one digital network. They have a common catalogue, website infrastructure and database on use and users. This bill takes the network to the next level, concentrating the digital activities of the public libraries, KB and DBNL in KB. Concentrating the digital efforts in one location reduces fragmentation in the digital domain and helps reach a wider audience. It gives extra force to the digital agendas of KB and of the public libraries. To that end, the following digital responsibilities of the public libraries are combined with the digital responsibilities of KB and DBNL:

- *Digital infrastructure*: This is the building, the management and the continued development of the digital infrastructure, including the associated innovation. For now, these items are carried out by Bibliotheek.nl under the responsibility of SIOB.
- *Content and contextualisation*: This includes the purchase and provision of e-content, based on proposals by the library sector and tailored to the various user groups and the associated management of rights and licences. In addition to primary sources, this is also about contextualisation and files. All activities carried out by KB, Bibliotheek.nl and DBNL in this area are combined. Although the emphasis is on text, the digital library may offer audiovisual content as well. For example, the Central Record Library (CDR) has developed a digital music service that is suitable for national use. This service is added to the package of the national digital library. Furthermore, connections are made with the Sound and Vision foundation.

Public Lending Right and e-lending

Public libraries have the possibility to lend physical works on the basis of a limitation in the Dutch Copyrights Act [Auteurswet].¹⁰ Copyright owners receive a fee through the Public Lending Right foundation. In the preparation of this bill, it was explored whether lending digital works (e-lending) may also be covered by this provision of the public lending right in the Copyrights Act and whether the European copyrights framework leaves room for a statutory exception from copyright. The parliamentary history of the Copyrights Act shows that the existing public lending right relates not

¹⁰ Section 15c, subsection 1.

only to books, but also to other information carriers (such as CD-ROMs) and that the legislator has seen the necessity to expand the public responsibility of the libraries to a diverse digital supply. Nevertheless, the text and the parliamentary history of the current Copyrights Act should lead to the conclusion that the act relates only to the lending of tangible (physical) copies of works, so that it does not leave any room for e-lending. The Rental and Lending Rights Directive, which has harmonised the public lending right for the European Union Member States, seems to be limited to the lending of tangible copies as well, so that this directive does not leave any room for adjustment of the Dutch act either.

In addition to the Rental and Lending Rights Directive, the 2001 Copyrights Directive is relevant. This directive contains an exhaustive list of permitted statutory limitations of copyright, including several limitations for public libraries. None of these provisions offer the libraries the room to provide copyrighted e-books to their members online without prior consent.

All in all, the conclusion that the existing European framework of directives in the field of copyright does not leave any room for the introduction on a national level of a statutory exception permitting e-lending by public libraries seems to be justified. This means that lending of e-content by public libraries will have to take place on the basis of contractual arrangements between the parties involved, such as publishers, collective rights organisations, distributors and libraries. The national government will monitor, and may play a facilitating role in, the progress of the foregoing.

Purchase and funding of e-content

The digital library must have sufficient relevant content at its disposal to add value for the wider audience. As a rule, the physical collection is purchased by individual libraries out of the local budgets. The purchase of digital media and the buy-out of rights or licences exceed the level of the individual library and can take place effectively on a collective level only. For reasons of efficiency, this legislation positions the purchase of digital content for the public libraries as an activity that is carried out on a central rather than a local level. This duty is no longer the responsibility of the individual libraries and the municipal authorities. This way, through a growth path, a corresponding amount is taken from the municipal fund and made available to the library sector on a central level, thus providing an adequate budget for digital content on a national level. This way, through a simple and efficient route, the libraries jointly have a substantial budget at their disposal to purchase digital content. The objective is to enable libraries to make a relevant digital collection available to their members. The local libraries remain responsible for specific local digital content and specific local applications.

KB is responsible for the actual purchasing on behalf of the Central Government, but the purchases are made exclusively on the basis of proposals by the public libraries. Consequently, the substantive choices are still made by the library sector.

KB's maintenance of the national digital library

It is KB's responsibility to maintain the national digital library. In sum, this means in any event: the management and development of the national digital infrastructure, the purchasing and contextualisation of e-content, the adoption of rules for the use of content of the digital library, and - where applicable - the adoption of rates for access to copyrighted content. KB thereby makes connections with other public providers of

e-content. The target group is the general public in the broadest sense, with possible attention for specific target groups. With a view to the coherence between the physical and the digital library, KB carries out this duty in consultation with the public library sector.

The way in which the national digital library is maintained is described by KB every four years in its institution plan. The individual element to be included to that effect is referred to as the national digital library management plan. The institution plan will be submitted to the Minister, so that KB's concrete shaping of its maintenance can be assessed by the Minister.

8. Opinions received

8.1. Opinion by the Council for Culture

On 6 June 2013 the Council for Culture issued an opinion on the bill. The Council is positive about the integration on a national level of the activities of Bibliotheek.nl, SIOB and KB, about the positioning of KB as the national library organisation, and about the set-up of a national digital library. The Council feels that an innovative vision on the function and the reach of the local, physical libraries is missing.

The Council wonders whether the objective of the act - the library system performs as a single network of cooperating organisations - can be realised without any enforceable obligations being imposed on municipalities. The Council fears that municipalities will cut down on their public library provisions based on the idea that the national digital library will be sufficiently able to serve the public. Therefore, the Council recommends that, in the act, the relevance and function of a public library provisions for a municipality and its residents and the values based on which the library operates be indicated, and that the foregoing be more strongly connected with other social domains.

By analogy with the public media duty imposed by the 2008 Dutch Media Act [Mediawet], the Council recommends that the act not only identify the functions of the public library, but also the public values based on which such functions are carried out. The Council identifies the following public values: balance, multiformity, quality, independence, and accessibility. According to the Council, this specification is important because it defines the boundaries between public and commercial providers of content.

Important objectives of the bill are the redefinition of the social functions of the public library, and the creation of a clear distinction between the private and the public domains. A description of the public values based on which the public library operates plays an important role in this respect. The recommendations of the Council will be followed, and the public values are included, not only in the explanation, but also in Section 4. These values are based in the Unesco Library Manifesto and described in the Library Legislation Update Outline Letter dated December 2011. The public values identified by the Council are slightly different. For reasons of consistency and continuity, it is preferred to continue on the basis of the same five public values. According to the Council, the bill mainly positions the local library as a classic lending centre of physical books. The Council recommends that the position of the local libraries be described more future-proof and clear. It should offer more room for innovation and put less emphasis on the lending function. The details of the functions

of the physical library require customisation and localisation. Based, inter alia, on this opinion, the social functions have been expanded. In addition to the classic functions of “reading, teaching, informing”, also “meeting and debate” and “art and culture” are identified as library functions.

In the repositioning of the library functions, according to the Council, a stronger connection between the public libraries and other social domains, such as cultural education, heritage, media, training and adult education, should be made. Furthermore, a stronger link may be sought with university libraries. This recommendation has been satisfied by providing a broader description of the social functions of the public library. Cooperation with the educational sector is already a permanent element of the responsibilities of the public library. Cooperation with other domains is advocated but not prescribed. The method and extent of such cooperation depends on local choices. KB's new role will reinforce the relationship between the public libraries and the university libraries. This proposal from the Council has resulted in adjustments to the General Part of this Explanatory Memorandum.

The Council recommends that the library field be restricted to two tiers of government, removing the provincial tier. The Council is of the opinion that the bill makes an attempt at making the provincial tier more efficient, but insufficiently demonstrates the necessity of this tier of government between local library organisations and the nationally operating KB. The Council recommends that the responsibilities of the provincial library organisations be transferred to municipalities and the Central Government, while retaining the current budget to enable innovation of the physical library provisions on a local level. This recommendation is not adopted based on the following considerations. In this bill the digital library is organised on a central level. Therefore, the bill restricts the duties of provinces to the physical domain. In the physical domain, the provinces are currently responsible for implementation of IBL. If the provincial tier is removed, IBL will have to be reorganised. This is a process with a great deal of impairment risk. Moreover, on a provincial level a process of upscaling and cooperation is in progress that may create a more efficient structure. It would be preferred to give this bottom-up process a chance. The Council has disregarded the fact that the budgets now deployed by provinces for the library services largely originate from their own provincial resources. These budgets will, therefore, not become available if provincial duties are transferred to another tier of government.

The Council finds it very important that the Central Government assume the responsibility for the set-up of a national digital library, to be transferred to KB together with the system duties. It expresses its concerns about the absence of the public lending right for e-content. Furthermore, the Council deems it restrictive if the access to copyrighted works in the digital libraries is reserved only to library members. In respect of the public lending right, for the sake of brevity, reference is made to the relevant passage in Chapter 7.

Finally, the Council requests a further substantiation of the choice to make statutory provisions in respect of the exemption for youths from paying a membership fee for the physical domain only. The Council would regret to see such an exemption not applying to the digital library. Further to this recommendation, the texts on youth membership fee in paragraph 5.4 have been adjusted.

8.2. Opinions by other governments

Opinion by the Association of Public Municipalities (VNG)

By letter dated 15 April 2013 VNG reacted to the bill. VNG endorses the proposed set-up of the digital library and - generally - the position of municipalities. In addition, VNG raises some question marks as to the social functions of the public library and the network structure. VNG is of the opinion that defining the social functions of the public library restricts municipalities in their shaping of the local library services. VNG deems the activities required for participation in the library network restrictive of local discretionary powers as well. VNG establishes that the financial position of municipalities is under pressure. As great discretionary powers as possible may enable municipalities to continue to supply public library services under those circumstances.

The bill gives municipalities a great deal of room in shaping the local physical library. That room is placed within a framework. One of the objectives of the bill is to reinforce the coherence in the library services.

This is realised by organising the library services as a network of cooperating provisions. Therefore, the parties in the network are expected to commit to a limited number of common activities: the use of a single catalogue, participation in IBL, the use of a single digital infrastructure, and collection building on the basis of mutual arrangements. A library that forms part of the national network of public libraries can offer the user more and better services. For example, through IBL, the user has access to the collections of all the Dutch libraries, including KB. The VNG approach entails the risk of the public library services disintegrating into a collection of individual organisations rather than a coherent network. Moreover, cooperation and coordination between library organisations lead to efficiency gains, so that they are conditions for continued optimal service of the users, even in the event of cuts. These considerations also apply to the obligation to prepare a joint collection plan. When resources are decreasing, it is advisable for library organisations to make mutual arrangements about the purchase of media. Within these preconditions, municipalities have great discretionary powers. The Explanatory Memorandum emphasises this based on text suggestions by VNG.

Opinion by the Association of Provincial Authorities (IPO)

On 10 April 2013 the bill was discussed in administrative coordination with VNG and IPO. Based on recommendations by IPO, an evaluation provision was added and a more generic description is used to identify the organisation that performs supralocal support duties. Subject to these adjustments, the bill has been approved by IPO.

Opinions by the governing councils of the BES islands

In the period of 13 May to 1 July 2013, the governing councils of the public entities of Bonaire, St. Eustatius and Saba were consulted on the bill. Subsequently, the governing councils of Bonaire and Saba issued opinions. The governing council of Bonaire has issued a positive opinion. The governing council of Saba indicates that there is not yet a digital library in Saba, and that the council does not expect any within the foreseeable future. Therefore, it deems the bill largely irrelevant to Saba. It

suggests that the bill be declared inapplicable to Saba and that any future applicability be reviewed in the evaluation of the act after five years.

Based on this response, the development of the digital library in Saba will be reviewed in further detail, and it will be studied in what term this could be available to the Caribbean Netherlands. The objective remains that the public entities can, in time, be connected to the national digital library. Therefore, the bill will not be adjusted on this point.

8.3. Results of the internet consultation

Between 19 April and 19 May 2013, the draft bill was submitted to stakeholders and interested parties by way of a public internet consultation. A total of 225 valid responses were received from private individuals (60%), from (employees in) the library field (37%), and from stakeholder institutions (3%).

The majority of responses support a revision of the existing library legislation with attention for the digital domain. The development of a national digital library is considered positive. The same holds true for the central role of KB in the library network. There are, however, comments on some aspects. These can be categorised according to the following main issues.

The relationship and interaction between the physical and the digital library

The responses confirm the relevance of the provision of both physical and digital services by the public library. They express the fear that the act will lead to a division between the local, physical library and the national, digital library. On the one hand, this is because the two components are defined separately in the draft act. On the other hand, this concern is raised by the option to enter into a separate digital membership. In addition, multiple respondents have gotten the - incorrect - impression that the physical library will be replaced in its entirety by the digital library. From a functional and legal/technical point of view, it is necessary for the bill to make a distinction between the physical and the digital library, because they are managed differently. This does, however, not mean that one exists separately from the other in actual practice. The coherence between the physical and the digital component is provided for, inter alia, in Section 7 (Network and participants), Section 8 (Performance of the network), and Section 10 (Collection plan). In order to emphasise this synergy even further, the sections on membership and access (Section 12) and the related texts in the Explanatory Memorandum have been reworded. The obligation for local libraries to register their members with the digital library has thereby been deleted.

Duty of care for municipalities

Many libraries suggest that the position of the local library be enshrined through a funding duty for municipalities. A funding duty or a duty of care is not in proportion to the general line of policy to impose administrative responsibilities at as low a level as possible. Furthermore, in accordance with the system of the Dutch Financial Relations Act [Financiële verhoudingswet], it should be provided that the financial consequences of a duty of care or a funding duty can be cushioned by the municipality. There is no room for that in the budget of the Ministry of Education, Culture and Science or in the national budget.

The library functions

There is a great deal of support for the redefinition in the draft bill of the social functions of the public library. The draft bill included three functions (knowledge and information, development and education, and reading and literature). Two other functions (meeting and debate, and art and culture) were described in the Explanatory Memorandum as derived functions. Various responses suggest that the latter two functions be included in the text of the act as well. The mere mention of the three classic core functions might frame the physical public library too much in its current form, whereas the functions of a library are shifting. This suggestion has been adopted.

Youth membership fee

A large number of respondents advocate a liberalisation of the proposed exemption for youths from paying a membership fee. There are also several who oppose such a liberalisation. Based on the arguments described in Chapter 5, it has been decided not to adjust the bill on this point.

The withdrawal from the municipal fund

Several parties from the library field suggest not making the proposed withdrawal from the municipal fund. They fear that the amount of the withdrawal will be deducted from the budgets for the local libraries, thus deteriorating the position of the physical library. The withdrawal from the municipal fund is the result of an administrative arrangement with VNG. It has been agreed that the national government will be responsible for funding the national digital infrastructure. The sector will arrange that a substantial budget will be structurally available for the central purchase of e-content. To guarantee this, an amount will be withdrawn from the municipal fund. This combination of funding of the infrastructure and funding of the content is essential to come to a fully-fledged digital library. The suggestions on this subject have not resulted in adjustment of the bill.

Data provision

Various libraries raise questions about the fact that the bill imposes on libraries the obligation periodically to provide several data. They do not agree that these data will become available beyond their own organisations and the local subsidy grantor. Furthermore, attention has been requested for possible costs ensuing from this obligation. The relevant article is intended to give the Minister an idea of the performance of the system as a whole. This involves, e.g., data on members, collection and lending. Such key performance indicators are indispensable as a basis for policy. As the library services are funded out of public resources, the performance of the system must also be accounted for in public. The data will be provided automatically through the national digital infrastructure to the extent possible. As this will take place based on the regular Finance & Corporate Services, there will be no, or hardly any, additional costs. The comments have not resulted in adjustment of the bill.

Certification

Several libraries suggest that the obligation be imposed on public libraries to meet the applicable requirements for certification. The public library services have a well-functioning certification system. This is a system of self-regulation. If this system were to be incorporated in the act, the Minister would be given the responsibility to determine, on the level of individual libraries, whether or not they are libraries within the meaning of this Act. Such a role is not in proportion to the decentralised nature of the local library services. Therefore, the comments have not resulted in adjustment of the bill.

Adjustment of the Copyrights Act

The majority of respondents advocate adjustment of the existing Copyrights Act, so that the limitation of the public lending right can also apply to e-books. This possibility has been explored but, as indicated in Chapter 7, is not feasible at this point because of European regulations. It will be argued that the subject of “e-lending and public libraries” should be placed on the European agenda.

Other items

The responses to the internet consultation showed that certain terms or passages caused confusion. For example, the collection plan, (the role of the province in) physical innovation, the nature of the membership of the digital library, access to non-copyrighted works, and the role of education in the network were unclear. These obscurities have been clarified in the text.

8.4. Other consultation

The bill was prepared in consultation with relevant external parties, i.e. VOB, KB, SIOB, the Dutch Language Union, and DBNL. During the consultation with these parties, it was analysed what topics require legislation and for what topics policy variations can be used.

In addition, the proposal to amend the Copyrights Act was submitted to the Public Lending Foundation, the Dutch Publishers Association, Dedicon and Viziris. These organisations do not oppose the amendment.

9. Financial consequences

The financial consequences of this bill are found within the existing budget frameworks. Categorized according to the various target groups of the bill, this results in the following picture.

Governments

The bill continues existing duties of the national government in the field of the public libraries from the Wsc, such as the responsibility for the system duties and for the provision for persons with print disability. In addition, the bill codifies policy that has been developed and implemented over the past few years in respect of the digital library. The expenditure for the total of these duties will remain within the existing

financial framework for the public libraries of article 14 of the budget of the Ministry of Education, Culture and Science. For reasons of purchasing strength and efficiency, e-content is purchased on a central level. For this purpose, upon implementation of the act, an amount will be withdrawn from the municipal fund. The amount is determined, inter alia, based on the developments in scope of the digital supply. This constitutes a shift of duties from local to central level. The provincial duties have been updated and standardised, but not essentially changed. To the extent that any changes are made, they will not have any financial consequences.

Library provisions

The national duties for the public library services will be concentrated with KB. These are the support of the library network ('system duties'), the provision for persons with print disability, and the management and development of the national digital infrastructure. The performance of these duties will be integrated into KB. The central structure of the digital library may have financial consequences for the local libraries. E-content will be purchased on a central level (see above). As a result, local libraries will no longer be required to incur these expenses.

Users

The bill maintains the existing regulations on membership and membership fee in respect of the physical library. As the market for e-books is in development, the bill does not contain any provisions on the financial conditions for access to e-books. KB may adopt these, taking into account the public duty of the public library and the financial possibilities. When adopting rates, KB will, however, hear the Minister.

10. Administrative burden

Based on this bill, library organisations are required to provide a number of data on resources, staff and results. These data provide an insight into the functioning and performance of the public libraries. They are intended for policy development and evaluation purposes. Reports based on these data may relate to the level of an individual organisation, to group level or to national level. The reason for this obligation is the need among subsidy grantors periodically to have performance data at their disposal on publicly funded library services. The obligation formalises the existing practice in which library organisations provide data, by way of an annual survey, for a sectoral information system (BIS). In actual practice, this obligation will not lead to any additional administrative burden, since the data need not be collected specifically for this purpose. The data are provided through the data warehouse as part of the regular business processes.¹¹ By Ministerial Regulations, the concrete data to be provided will be identified. Therefore, it cannot be determined until such Regulations have been adopted whether this will lead to an increase in administrative burden.

The other elements of the bill will not impact the administrative burden.

11. Implementability and enforceability

¹¹ The data warehouse forms an integral part of the digital library.

The bill gives KB a central role in the public library system. KB will be responsible, inter alia, for the national digital library and the system duties currently performed by SIOB. Therefore, KB may be considered the most important implementer of the act.

In this context, KB has been requested to review the bill for aspects of implementation and enforcement, and to answer the question as to whether it foresees any problems in the implementation of the proposed legislation. KB has thereby been requested to involve BNL and SIOB as current implementers. Finally, the Audit Service has been requested to test the bill for financial validity.

In general, KB deems the bill implementable. On its recommendation, however, the scope of the bill for KB as an organisation has been clarified. A clear distinction has been made between the duties under the WHW and under the present bill. In addition, at its request, the power to grant subsidies has been added in order to enable it to fulfil its duties. This mainly relates to the promotion of innovation in the network and arranging the provision for persons with print disability.

For purposes of enforceability, SIOB has asked about the consequences if parties in the network fail to comply with the statutory obligations or the arrangements made. This issue touches more generally on the nature of the bill. The bill intends to realise more direction and coherence in the context of a decentralised system. This has been shaped through a description of the functions of a public library and of the subjects to be carried out by libraries jointly. Parties are expected to hold each other accountable in the event of derogations. Statutory supervision and statutory penalties are not in line with the nature of the present bill.

Finally, BNL in particular has expressed concerns as to the administration of users with the national digital library. Currently, decentralised administrations are used, but a national membership administration would be more efficient. Based on this comment, the bill has been adjusted so as to create the option for the sector to come to an integrated administration for physical and digital use of the public library. Furthermore, Section 8 now includes the obligation for the public library provisions mutually to coordinate their membership administrations.

From a financial perspective, the Audit Service does not see any problems for the enforceability of the bill.

SECTION-BY-SECTION PART

Section 1

Subsection 1

National digital library. This library is defined as a provision rather than as an organisation. It is a publicly accessible, location and time independent provision for anyone to consult. A visit to the provision is, of course, dependent on an internet connection.

Local library. This definition corresponds with the definition of public library in the Wsc. This is a library provision that is open to the general public and is subsidised by one or more municipalities or the public entities of Bonaire, St. Eustatius or Saba. A local library may have multiple branches. The obligations in this act apply to the organisation as a whole, rather than to each individual branch Provincial support institution. A provincial support institution is a provision subsidised by one or more provinces that offers support to the local libraries in the relevant province or provinces. This means that a provincial support institution can support the local libraries in multiple provinces, so that there need not be twelve of these organisations. This is a subsidised or maintained provision, which means that it may also be a division of a provincial organisation rather than an independent organisation.

Work. For this definition, reference is made to the Copyrights Act. This is a broad definition, which may cover all kinds of materials and media. For the physical libraries, these will be physical materials, such as books, magazines, CDs and DVDs. For the digital library, these will be various types of digital file types for text, audio and video.

Subsection 2

The library sector uses various terms to refer to users of a provision, such as subscribers, members and card holders. The key characteristic is that the user must be registered with the provision. This bill has opted for the term “leden” (members) to refer to registered users. The description of this term has been included to indicate that they are not members of an association.

The description is not included in the definitions of subsection 1, because the meaning of “lid” is applicable only when referring to a member of a library provision and, of course, not when referring to a subsection of the act.

Section 2

“Public library provision” is the general term for a provision subsidised or maintained by a tier of government in the system for libraries that are open to the general public. This term includes the local libraries, the provincial support institutions and KB. For KB, this bill regulates the duties covered by the framework of the library function for the general public. These duties are supplementary to those imposed on it by the Higher Education and Research Act (hereinafter: WHW).

Section 3

With the exception of the provisions relating to Inter Library Loans, this bill applies to the public entities of Bonaire, St. Eustatius and Saba. Loans among libraries in those public entities and libraries in the European part of the Netherlands is impracticable. Other provisions, such as the functions of a library and the exemption for youths from paying a membership fee are, however, applicable. The local libraries in the public entities are participants in the library network, although not all the requirements apply to them. The requirements relating to Inter Library Loans and the collection policy are not applicable, however, the requirement to support education is. Furthermore, the local libraries will, in time, also have to have a digital infrastructure

in place that is coordinated with the other participants, in order to involve the libraries in the network to the extent possible.

Finally, residents of the public entities can simply become members of the national digital library.

Section 4

A public library provision distinguishes itself from market parties by providing the general public with objective information and knowledge. The service of a public library provision is based on five values, to wit: independence, reliability, accessibility, multiformity and authenticity. These are internationally recognised basic principles. For a further explanation, reference is made to the general part of this Explanatory Memorandum.

Section 5

This section provides for the five basic functions of a public library provision. A public library provision is deemed to exist only if each of the five basic functions is fulfilled. The way in which these functions are fulfilled will depend on local demand and local policy. The functions can be fulfilled in many different ways, e.g. through regional cooperation. This may mean that not every library branch in a regional partnership fulfils the functions to the same extent. The functions apply only to public library provisions that are open to the general public. This excludes the provincial support institutions, since their function is to support the local libraries rather than directly focus on the general public.

Section 6

The responsibility for the public library provisions in the Netherlands is imposed on the municipalities, the public entities of Bonaire, St. Eustatius and Saba, the provinces and the Central Government jointly. Each tier of government plays its own role in the system of public library provisions. A network of public library provisions can perform properly only if these roles are well coordinated. For example, the municipalities and the public entities are responsible for the local libraries, the provinces for the provincial support institutions, and the Central Government for KB and the national digital library. Since the public library provisions form the network, the requirements have been set for the provisions rather than for the tiers of government. A public library provision is, however, subsidised largely by one of the tiers of government. It is, therefore, partly the responsibility of the governments to realise one single library network. Therefore, the duty to promote that a public library provision subsidised by them perform the obligations under this act has been imposed on the various governments. This duty can, in concrete terms, be performed by attaching obligations to the subsidies granted to the library provision.

This section refers to provincial governments, municipal executives and governments of the public entities rather than to the relevant bodies. The reason for this is that no concrete executive duty is imposed, and that various bodies could be authorised in respect of the relevant responsibility. The Provinces Act [Provinciewet] and the Municipalities Act [Gemeentewet] define the provincial government or the municipal

executive, as the case may be, as the competent authority for the relevant duty. This description matches the responsibility described in this section.

The performance of the network requires that each of the parties play their role. Resolutions by one of the parties may affect the network as a whole. Subsection 3 provides that, if a party intends to adopt a resolution that would have substantial impact on the network, such party will discuss its intention with the other parties in the network. This may occur on various government levels: between national parties (Central Government, Association of Provincial Authorities and VNG), but also on a local or regional level. This relates only to resolutions of a drastic nature, i.e. resolutions that will lead to the closing of a public library provision or that will reasonably preclude a public library provision from performing the obligations under this act. The goal of the consultation between the parties is to organise the system of public library provisions so as to safeguard its accessibility for the general public. If necessary, arrangements will have to be made between the parties involved to achieve this goal. One may think, for example, of setting up partnerships between neighbouring municipalities to jointly offer public provisions.

Section 7

This section provides that the public libraries form one single network. Forming networks was already provided for in Section 11b of the Wsc, and this section builds on that. The Wsc describes the formation of networks as a duty for governments to promote. Based on that provision, a large number of local, regional and national networks have been formed that focus mainly on lending. This bill brings all those networks together. All local libraries and provincial support institutions form one single network, to which KB is added in respect of its duty to maintain the national digital library. For purposes of its other duties pursuant to this bill, KB is considered a public library provision but not part of the network. This is because the system duties are performed for the benefit of, but not within, the network. The provision for persons with print disability is a special provision, which is not intended for the other users of the public library provisions.

Section 8

The network concept is based on the presumption that the participants in the network work together and jointly serve the users. To achieve this cooperation, six obligations are imposed on the provisions. For a substantive description of those obligations, reference is made to the general part of this Explanatory Memorandum. Not every provision will perform the same duties, but they are all required to make a contribution. This applies to Inter Library Loans. The works will have to be made available by the local libraries, the provincial support institutions will provide transport, and KB will, through the national digital library, arrange the digital infrastructure in which all works are visible. In the coordination of the digital infrastructure, KB will develop the technical conditions. The substantive coordination of the infrastructure will have to be determined by mutual consultation between the participants.

Section 9

In addition to its duties under the WHW, KB will be given system duties in the field of the public library. These duties are in line with its current activities and should form a full and integral part of KB's general activities. The purpose of the system duties is to support the network of public library provisions. These duties can be performed in various ways. In certain situations, KB itself will perform activities, whereas in other situations it will promote that participants in the network carry out certain activities. The duty of coordination of the network specifically includes innovation. This relates to coordination of innovation in general as well as between the physical and digital domains.

The purpose of the duties of education, information and reflection is to collect and disseminate knowledge and insights relating to the library sector. This links up to international developments in the field. In addition, KB will be made responsible for maintaining the national digital library. In this respect, see the explanation to Section 17. Finally, KB will be given the duty to arrange a library provision for persons with print disability. This special provision exceeds the local level and has been carried out on a national level for years. The factual provision is currently arranged by Stichting Aangepast Lezen, in cooperation with stichting Dedicon and CBB, but KB will be managing and coordinating this provision. As this provision is intended for a specific target group and the works are not available to persons without print disability, this library provision does not come under the network. It is a special provision that does, however, come under the public library system in the Netherlands as a whole.

Section 10

KB is responsible for preparation of the joint collection plan. The plan can, however, be prepared only in consultation with the representatives of the local libraries and provincial support institutions. As a rule, the VOB trade association will act as representative of the library provisions.

The joint collection plan is to be prepared every four years. It provides a framework for the management and composition of the collection by a public library provision within the network and is the basic principle in terms of procedure rather than substance. One of the functions of the collection plan is to coordinate the ever changing demand of users for information. In this respect, the provision of data on the use of the library provision is highly important.

Section 11

Data are provided in two ways. Firstly, local libraries and the provincial support institutions provide the data on their collections and the availability thereof to KB, as the manager of the national digital library. This is necessary for the preparation of the National Union Catalogue (NBC). The existing collections have already largely been combined in the NBC, but new works to be purchased will also have to be included. KB will add to the catalogue the data on its own collection as well as the collection of the national digital library. KB can concretely determine the data to be provided. These are data that are required for the national union catalogue. KB may thereby set rules on the way in and the time at which the data are to be provided to KB.

The provision of data as referred to in subsection 2 is for policy purposes. The data referred to in such subsection are data that the Minister can use for policy development. They relate to the library provision and to staff and users. These data are not personally identifiable.

The concrete data to be provided will be indicated in Ministerial Regulations. One may think of the number of youth members of a library provision or the age structure of the staff. The data also include financial data relating to the library provision. The rules will also regard the method and time of provision of data.

To the extent possible, the method of provision of data will be shaped so as to allow for automatic provision and to limit the administrative burden for the organisations to a minimum.

In the preparation of the regulations, representatives of the local libraries and provincial support institutions will be consulted.

Section 12

With this bill, the public library in the Netherlands will comprise various provisions working together within a single network. The public library thereby consists of a physical and a digital component. Anyone registered as a resident in the Netherlands (including the Caribbean Netherlands) can become a member of the public library. The membership may include the physical component, the digital component, or both.

Subsection 4 provides for the possibility to offer persons other than residents to become a member of the public library. For a local library, it is up to the Municipal Executive or the governing council of one of the public entities to open up this possibility. For the national digital library, the Minister may decide to do so.

Outside the Netherlands, the availability of the function of lending copyrighted digital works is likely to be limited in view of the licences to be contracted with publishers and authors. It is conceivable, however, that users outside the Netherlands may also be interested in works in the Dutch language. Depending on the conditions of the licence, it will then have to be reviewed whether the membership will be opened to other groups of private individuals as well. Since the national digital library is funded by Dutch public resources, rates for persons abroad might, however, be higher. In respect of opening the membership to persons abroad one may, first of all, think of the persons who are registered in the Persons Database as non-residents.

Section 13

The structure of Section 11a of the Wsc on the exemption for youths from paying a membership fee has been maintained. In addition, rules are set for the monetary contribution for other, non-printed works. In this respect, the membership fee required from youth members may not exceed fifty percent of the membership fee payable by adults.

Section 14

After consultation with representatives of the local libraries, KB may adopt rates for the use of services or access to digital works. As a rule, this will relate to copyrighted works only. Pursuant to Section 17 of the Non-Departmental Public Bodies Framework Act, the amount of a rate requires the approval of the Minister. When granting approval, the Minister will primarily assess the accessibility of the public library provision.

Section 15

This section provides for Inter Library Loans. The substance of the provisions corresponds with that of Section 11a(1) and (2) of the Wsc. This section reflects the practice of loans of eligible works between local libraries. It does not contain any obligation for KB to add its physical collection, which it has built for purposes of its academic and heritage function, for Inter Library Loans purposes. Where works are suitable for lending to the general public, KB will, however, add them to the national union catalogue to the extent possible.

Section 16

This section reflects the provincial duties in the physical domain. Every provincial support institution is responsible for transport of works between libraries in the province or provinces by which it is subsidised.

The provincial support institutions jointly are responsible for the transport between provinces. In addition, they are jointly responsible for the development of innovation for the benefit of the local libraries. The latter duty will be carried out in consultation with KB, in view of the general duty of coordination of the network as a whole, as imposed on KB in Section 9(a)(i).

These duties are based on a proposal by IPO for a basic provincial support package. In addition to the two duties referred to here, the IPO proposal also included provincial collection policy and the formation of networks. These subjects need not be specifically provided for, as they are already defined in Sections 6, 7 and 8 as joint duties of all the participants in the library network.

Section 17

KB will be responsible for maintenance of the national digital library. This duty is specified in this section. To come to a proper maintenance of the national digital library, KB must in any event manage and develop the digital infrastructure. This is the technical work to enable the provision of the internet service.

In addition, the collection is managed and the works are placed in context in the digital library. In the digital domain, this is one of the most important added values of a public library provision. Furthermore, the digital collection of KB as an academic library will be added to the collection of the public libraries. Eventually, these

collections should be complementary. Regulations will be adopted for access to the collection. The regulations for access and lending regard issues such as the number of works to be borrowed by each member, the lending period, the rates, etc. The purpose of the national digital library is to serve a wide audience, while at the same time keeping an eye on specific target groups. KB's duty is to pursue the policy in terms of audience reach. Finally, in the context of the digital library, KB is to work together with other public providers of digital works. Examples are the Sound and Vision Institute, Europeana, and the Dutch Literary Museum.

For the purpose of maintenance of the national digital library, KB will prepare a management plan every four years. The digital library management plan forms part of KB's institution plan. The management plan will generally address the development of the national digital library, and will specifically discuss the way in which the elements of maintenance referred to above will be realised. In addition, the management plan will discuss the way in which digital works will be purchased pursuant to Section 18.

After adoption, the management plan will be sent to the Minister. The Minister will have six months to grant consent. During that period, the Minister will hear the representatives of the provinces and municipalities, as well as representatives of local libraries and provincial support institutions.

Consent to the management plan will be withheld only if the plan insufficiently fulfils the functions of a public library provision or in the event of conflict with the law or the public interest.

Section 18

Digital works for the national digital library will be purchased by KB on behalf of the Kingdom of the Netherlands. This is, in fact, a statutory power of attorney to represent the Central Government. This way, rights are owned directly by the Central Government, and no transfer will be required if any other form of deployment of works for the public libraries should be desired. Furthermore, this creates a separation between works purchased by KB in the context of its academic duty and works purchased out of resources from the purchasing budget for the public libraries. Subsequently, the Minister will grant KB the right, on behalf of the Central Government, to make the works temporarily available to users for purposes of the national digital library. The Minister will make an annual amount available for purchase. This amount will originate from the municipal fund and is intended for building the collection. Since the local libraries will no longer be building a digital collection, part of the resources for the collection will be transferred to the Minister. The foregoing amount will be determined in consultation with VNG and based on research. KB's power of attorney will be limited by the amount made available by the Minister. Any resources not spent will remain the property of the Kingdom of the Netherlands.

The joint local libraries rather than KB will be responsible for the substantive selection in the purchase. A purchasing committee including representatives of the local libraries will nominate works. The nomination must remain within the budget made available.

Section 19

For purposes of fulfilment of the duties imposed by this bill, KB will receive an addition to its government grant. The provision thereof has been made to correspond with the relevant rules in the WHW to the extent possible. The government grant under this bill will run alongside KB's existing cycle of budgeting and accounting. For the duties pursuant to this bill, KB will include a separate section in the institution plan, the budget and the annual report. The institution plan will in any event include the management plan of the national digital library (see Section 15(2)). In addition, it will be separately indicated how the other duties (system duties and the provision for persons with print disability) are carried out.

Section 20

KB will be given a basis for the grant of subsidies. This will specifically be required to provide resources to the library provision for persons with print disability. KB may also grant subsidies for its system duties. One may think of a subsidy for innovation of the network. This does not relate to the provision of goods or services to KB, but to the promotion of activities in the public interest, the end result of which is often not known in advance.

Before a subsidy is granted, KB will draw up regulations in that respect. Such regulations will contain the conditions for the grant of the subsidy, the method of submission, obligations to be imposed, the method of reporting of a subsidy and, where applicable, rules on a subsidy ceiling, payment and advance funding. Regulations will be submitted to the Minister for approval. These regulations are comparable with those of Section 10 of the Wsc for the cultural funds.

The implementation of the granting of subsidies will be associated with the subsidy desk to be set up by the Ministries of Education, Culture and Science; Health, Welfare and Sport; and Social Affairs and Employment.

Section 21

Since the library legislation is no longer provided for in the Wsc, this act requires a special subsidy basis for the granting of subsidies for the library system. In principle, the Minister will be reluctant to grant subsidies, now that the system duties have been imposed on KB. As a safety net, however, the Minister will retain a possibility to grant a subsidy. Further rules for the granting of subsidies can be set by Ministerial Regulations. It has not been indicated what those further rules will relate to, because this already ensues from Title 4.2 of the General Administrative Law Act, which provides for the granting of subsidies. Further rules pursuant to this subsection may be set to the extent allowed by Title 4.2. This may include further detailing of the activities for which a subsidy can be granted, or subjects with respect to which the Awb provides that they need to be provided for by statutory regulations. The limitation of this delegation provision is, therefore, set by Title 4.2 of the Awb.

Section 22

The basic principle is that items created with public resources must remain available to the government. It is important, particularly in the development of digital items, to prevent third parties from acquiring any intellectual property rights in items destined for public purposes, for in such event the government would no longer be free to use such items. That is why the obligation was imposed on KB to endeavour to acquire all intellectual property rights or a transferable use right in the performance of its duties. The acquisition of rights is mostly important if third parties are engaged. In principle, KB is to acquire title to the rights or a transferable use right. In special situations, it is conceivable that the transferability of a use right is unfeasible, for example in the event of disproportionately high costs.

In addition, it has been determined that KB will cooperate in the transfer of rights to the Kingdom of the Netherlands. This way, the Minister can deploy items developed for other public purposes as well or make them available to third parties. This is, of course, not necessary for works with open access standards.

Section 23

Monitoring and supervision are provided for identically to Section 8a of the Wsc and relates only to the obligations attached to subsidies. There is currently no monitoring by the Minister of compliance by local libraries or the provincial support institutions with the other statutory provisions, and this is not appropriate within the decentralised library system. It is mostly up to the municipality or the province to hold a subsidised library organisation accountable and, where necessary, to set requirements for the subsidy. The bill does, however, offer a basis for library provisions to hold each other accountable in respect of the statutory obligations. Supervision of KB is already provided for in the WHW in combination with Section 43 of the Dutch Government Accounts Act [Comptabiliteitswet]. Chapter 13 of the former act contains a duty for KB to render account to the Minister. Furthermore, Section 43 of the Government Accounts Act gives the Minister possibilities to supervise legal entities with a statutory duty. Both supervisory instruments also apply to the extent relating to the statutory duties carried out by KB pursuant to this bill.

Section 24

In view of KB's new duties, technical adjustments will be made to the WHW on some points (paragraphs A and C). In addition, the WHW will provide for a declaration that the Non-Departmental Public Bodies Framework Act is applicable, as will be explained below.

Paragraph B

The declaration that the Non-Departmental Public Bodies Framework Act is applicable to KB will be added in a new Section 1.16a, which will expressly provide that that act will become applicable to KB. KB will, thus, become a non-departmental public body with public-law legal personality. KB already has its own legal personality under the WHW, which will not be changed. This legal personality is necessary for KB's Finance & Corporate Services. These relate, first of all, to the many contracts and licences that KB enters into in the performance of its statutory duty. These will increase in number

even further with the maintenance of the national digital library. In addition, KB will receive European subsidies (inter alia for scientific research which, as a Central Government division, it could not invoke). In the application of the Framework Act, an exception will be made in respect of Section 15. Section 15(1) provides that the rules governing the legal position applicable to civil servants appointed by Ministries apply *mutatis mutandis* to the staff employed by a non-departmental public body governed by public law which is not a Central Government division. Since 1997 the responsibility for the legal position in higher education and scientific research (NWO, National Library of the Netherlands (KB), Koninklijke Nederlandse Akademie van Wetenschappen, universities and academies for higher education) has been imposed on the employers. As a result, the legal position with KB has now been properly provided for in the collective bargaining agreement (CAO) for Research Institutions. Although Section 15(2) of the Framework Act provides for partial derogations from the main rule of the first subsection by Order in Council, the rules on KB's legal position do not constitute a partial derogation. That situation goes beyond the exception referred to in Section 15(2) of the Framework Act. The reason for the derogation is particularly found in the fact that the staff of KB partially perform research and scientific work, in which the academic freedom of the employees is highly important. The rules on the legal position of civil servants in Ministries do not provide for any safeguards to guarantee that freedom and do not offer the possibility to allow intellectual property rights to vest in staff. Otherwise, the differences between the two sets of terms of employment are relatively minor, especially because the job classification systems and the job evaluation systems have the same origin. Application of the General Civil Servants Regulations [Algemeen Rijksambtenarenreglement (ARAR)] to KB will be approximately 2% more expensive than the CAO for Research Institutions as a result of the difference in salary scales in relation to the working week and leave entitlements. Based on KB's current workforce, this comes down to an amount of approximately EURO.3 million per year.

Paragraph D

Pursuant to Sections 18 and 34 of the Non-Departmental Public Bodies Framework Act, a non-departmental public body is to file its annual report and financial statements with the Minister before 15 March. Section 2.9(1) of the WHW sets this filing date at 1 July. The new subsection 6 makes it clear for KB that KB needs to file before that. Otherwise, the Non-Departmental Public Bodies Framework Act is fully applicable to the annual report and financial statements. This means that KB's financial statements require the Minister's approval and that KB's annual report will be sent to both Houses of the States General. The other elements of KB's annual report are not subject to these requirements.

Paragraph E

The provision for the National Library of the Netherlands on the supply of information at the Minister's request can be deleted, as Section 20 of the Non-Departmental Public Bodies Framework Act already contains an obligation to that effect.

Paragraph F

Section 13.6(3) WHW can be deleted, since Section 11 of the Non-Departmental Public Bodies Framework Act provides that board regulations are to be sent to the

Minister for approval. As a result, the regulations are to be sent to the Minister. Note that the grounds on which approval can be withheld are limited.

Paragraph G

Pursuant to Section 22 of the Non-Departmental Public Bodies Framework Act, the Minister may reverse resolutions adopted by a non-departmental public body. Section 13.9 of the WHW already contains a procedure for reversal of resolutions adopted by KB, but that reversal does not regard administrative law resolutions. Subsection 3, as now added to Section 13.9, makes it clear that administrative law resolutions that KB can adopt pursuant to the Public Library Provisions System Act are governed by the reversal procedure of the Non-Departmental Public Bodies Framework Act.

Sections 25 and 26

These are technical adjustments in view of the deletion of the library provisions of the Wsc and the regulations in the present bill.

Sections 27 and 28

The exception in the Copyrights Act and the Neighbouring Rights Act [Wet op de naburige rechten] on the lending fee for persons with print disability is brought in line with actual practice, for the relevant provisions have become obsolete.

Stichting fonds voor het bibliotheekwerk voor blinden en slechtzienden ceased to exist several years ago and the library provision for persons with print disability has since been shaped differently. In 2007 the library services for persons with print disability were transferred to the public library services. Implementation is carried out by the nationally operating Stichting Aangepast Lezen, Dedicon, the Christelijke Bibliotheek voor Blinden en Slechtzienden, the provincial support institutions and the local libraries.

The provisions no longer refer to the blind and visually impaired, but to persons with a disability. They may include persons who can no longer read in the customary manner due to their disability. In addition to a visual impairment, one may also think of persons with dyslexia or certain muscle diseases. So, the exemption applies only to persons for whom texts must necessarily be converted to a different form, such as Braille or audio book in view of their disability.

Section 29

The bill contains an evaluation provision because of the rapidly changing circumstances in the library services. Particularly digitisation leads to continuous changes. Therefore, within five years of the effective date of the act, it will be reviewed how the library system as built up under this act is performing. Evaluation criteria will include: audience reach, public valuation of the public library, the multiformity of the supply, and the coherence in the system.

Pursuant to Section 6 of the Non-Departmental Public Bodies Framework Act, the Minister for Housing and the Central Government Sector co-signs this bill. Therefore,

the Explanatory Memorandum is provided also on behalf of the Minister for Housing and the Central Government Sector. In addition, this Explanatory Memorandum is provided also on behalf of the State Secretary for Security and Justice.

The Minister of Education, Culture and Science, M. Bussemaker