

Summary of our publication

Air France – KLM share acquisition

Our report is currently being translated into English. When finished it will be made available on this website.

In February 2019, the Minister of Finance bought shares in Air France-KLM (AFKL) with the government's approval to a value of €744 million. Parliament, however, had not authorised the expenditure in the Ministry of Finance's budget and it had not been informed in advance about the acquisition in the customary manner.

The Netherlands Court of Audit has taken a further look at the acquisition of the AFKL shares, and in particular at the regularity of the transaction. Respect for parliament's rights to authorise the budget and be informed are preconditions for regularity.

Parliament's right to authorise the budget is laid down primarily in the Constitution and in section 2.3 of the Government Accounts Act. The provisions state that expenditure can be incurred only after budgeted funds have been authorised by parliament. Under sections 2.27 and 4.7 of the Government Accounts Act, moreover, ministers must inform parliament of such transactions in advance. By enabling parliament to scrutinise the acquisition of a participating interest before the requisite funds have been authorised, these provisions ensure that parliament is not presented with a *fait accompli*.

As the minister did not want to make the acquisition of AFKL shares public, knowledge of the transaction constituted price sensitive information, or insider knowledge. The European Market Abuse Regulation (MAR) applies in such situations and the insider knowledge is subject to confidentiality requirements. In the minister's opinion he could not inform parliament in the customary manner because doing so would have breached the MAR requirements. The minister accordingly decided to acquire the shares without informing the Senate. However, he did inform 12 members of the House of Representatives' standing committee on finance during a closed meeting at the Ministry of Finance and had them sign a declaration of confidentiality. As the meeting was not a formal debate in the House in accordance with the House's Rules of Procedure we think neither the Senate nor the House was informed of the transaction. In our opinion, the transaction was therefore irregular.

We have also included this opinion in our *Report on the Annual Report of the Ministry of Finance and the National Debt 2019*, which was published at the same time as this audit report. The report on the ministry's annual report and the national debt considers all the ministry's expenditures, obligations and revenues and explains their consequences for our opinion on the annual report and the central government accounts.

Parliament's rights to authorise the budget and be informed are fundamental principles of our parliamentary democracy. It would be a matter of some concern if a culture were to arise in which they were subordinated to the achievement of policy goals. As a matter of principle, the application of European rules must also respect the correct parliamentary procedure.

In a parliamentary democracy, the interplay between government and parliament is based on mutual trust. This creates a shared responsibility for both parliament and the government. That shared responsibility also means parliament must ensure its procedures uphold the mutual trust.

This brings us to the following recommendations.

1. We recommend that the Minister of Finance respect the rights of both the House of Representatives and the Senate to authorise the budget and be informed, confidentially or otherwise.
2. We recommend that the legislator (government and parliament) consider whether and how section 4.7 of the Government Accounts Act should specifically state that a preliminary parliamentary scrutiny procedure can be conducted confidentially and that the term of the procedure can be shortened with the agreement of the minister and parliament.
3. We recommend that the House of Representatives and the Senate consult the Minister of Finance to evaluate the existing parliamentary procedures regarding the provision of information in exceptional cases and provide further procedures where necessary.