

Landelijk Orgaan Wetenschappelijke Integriteit (LOWI)  
c/o the Secretariaat  
Postbus 19121  
1000 GC Amsterdam

(anonymised as far as relevant)

June 28 2018

Concerning: **Enquiry** on the use of English in KNAW / LOWI procedures on integrity of science

Dear LOWI,

(1) It appears that I lack some information of a general nature. Perhaps it would be possible for you to provide some answers to the questions below.

This letter is a **general and open enquiry** concerning the use of English in procedures at KNAW / LOWI on cases of integrity of science.

**NB. Direct cause for these questions**

See my letter to IEA, NGA Center and CCSSO.<sup>1</sup> Page 2 states that “the Dutch system on Research Integrity apparently is failing”. I want to document this failure, and apparently I need more information for this documentation. (Perhaps this letter to IEA etc. also highlights the importance of the following questions for you.)

**PM. A context that may be mentioned but that is not of direct relevance**

We have had an earlier exchange of views on the use of English in KNAW / LOWI procedures on cases of integrity of science. Currently there runs, under confidentiality: (1) a complaint at Nationale Ombudsman w.r.t. the board of Leiden University,<sup>2</sup> (2) a complaint under LOWI Reglement article 13.<sup>3 4</sup>

I pose these questions in the context of these cases but *independent* of this context. It appears that I lack some information of a general nature, and this best is dealt with by a **general and open enquiry**.

It appears to be difficult to put the information and questions into a sequential order. The following has some order, but still rather crude. First I present some information and then I formulate questions.

**Information: A change at KNAW / LOWI in 2013-2017**

The **Appendix** contains the official texts at KNAW / LOWI on the use of English.

(2.1) The change:

- In 2013, LOWI allowed a submission in English even while all parties spoke Dutch.<sup>5</sup>
- In 2017, LOWI states that it has a “huidige vaste lijn” (current fixed policy / line) of only allowing English when one party doesn’t speak Dutch.<sup>6</sup>

<sup>1</sup> <https://boycottholland.wordpress.com/2018/06/27/letter-to-the-makers-of-ccss-and-the-makers-of-timss/> and <http://thomascool.eu/Papers/Math/2018-05-31-Letter-to-IEA-CCSS-anonimised.pdf>

<sup>2</sup> These issues are confidential. (a) My letter to CWI Leiden started the procedure and is not confidential: <https://boycottholland.wordpress.com/2016/10/08/onderzoek-over-rekenonderwijs-voorgelegd-aan-commissie-wetenschappelijke-integriteit-leiden/> and <http://thomascool.eu/Papers/Math/CWI-Leiden/2016-09-30-Letter-to-CWI-anonimised.pdf>

(b) Your decision is at <https://www.lowi.nl/nl/bestanden/LOWIbesluit2017nr.7.pdf> and summary at <https://www.lowi.nl/nl/bestanden/SamenvattingLOWIbesluit201707.pdf>

<sup>3</sup> <https://www.lowi.nl/nl/over-lowi/klachten-over-lowi>

<sup>4</sup> <http://maxius.nl/algemene-wet-bestuursrecht/artikel9:1>

<sup>5</sup> <http://thomascool.eu/Papers/COTP/LOWI/Index.html>

(2.2) The *Reglement* and *Werkwijze* state when another language than Dutch might be used. These documents employ the criterion of “doelmatig” (efficient).<sup>7</sup>

- Efficiency is a general criterion that is wider than the “huidige vaste lijn”.
- The “huidige vaste lijn” may actually be in conflict with efficiency.
- This “huidige vaste lijn” is not yet included in a new *Reglement* and *Werkwijze*, though *Reglement* may be regarded as the “constitution” of LOWI.

(2.3) Who are considered parties ? It seems that the world of law recognises at least two parties. When there is only one party then there might not be a case. But in cases of integrity of science there are also experts and witnesses, often from international science that uses English. For its “huidige vaste lijn” LOWI appears to focus only on the submitter of a case and the persons mentioned in the case (often called “defendant”). These are called “parties”, and perhaps there are more of those.

- This would however overlook experts and witnesses and the efficiency of the whole process. The clear communication with international experts and witness could be key.
- There is also the outside world. Even when submitter, defendant, and expert were all Dutch, then there could still be an international community who could benefit from following procedures in Holland on integrity of science. Science is basically international in itself.

### **Question 1. Would you happen to have names of lawyers on this issue ?**

My protest is that KNAW / LOWI apparently since 2017 curbs the use of English in its procedures, in a manner that works against both integrity of science and efficiency. I am an econometrician and teacher of mathematics, and no lawyer (or translator).<sup>8</sup> Apparently my contacts in the world of law are limited. I haven't had counseling on the use of English for procedures at KNAW / LOWI on integrity of science, or the changes at LOWI.

*Would you happen to know some lawyers at the academia who would be interested in my protest and who might support my protest, and who might publish in appropriate journals ?*

I am supposing that there might not be uniform agreement in the legal world on this, and probably you are better placed than me to know about such lawyers. When you made the change somewhere in 2013-2017 there might have been this kind of discussion already. Perhaps there are already some publications about the issue that I am not aware of.

Perhaps you and the participating universities might put on your websites lists of academics at the university departments of law who are interested in issues on integrity and who would be willing to advise on them. There are already confidential counselors but this would concern general issues.

### **Information: The legality of it all**

The Nationale Ombudsman<sup>9</sup> communicates to me: “You may write to us in English but we reply in Dutch.” (personal communication). The website has a page in English and states that a non-Dutch reply might be given if a submitter would not speak Dutch.<sup>10</sup>

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<sup>6</sup> <https://www.lowi.nl/nl/bestanden/LOWIbesluit2017nr.7.pdf> pag 2 bottom: “Zoals ook aan Verzoeker is uiteengezet, staat het ter beoordeling van het LOWI of het gebruik van de Engelse taal al dan niet doelmatiger is en de huidige vaste lijn is dat het LOWI het gebruik van de Engelse taal toestaat wanneer één der partijen anderstalig is.” Google Translate today: “As also explained to the Petitioner, it is at the discretion of the LOWI whether or not the use of the English language is more efficient and the current fixed line is that the LOWI allows the use of the English language if one of the parties speaks non-language.”

<sup>7</sup> <https://www.lowi.nl/nl/over-lowi/reglement-en-werkwijze-lowi>

<sup>8</sup> “a person who practices or studies law; an attorney or a counselor”  
<https://translate.google.com/?sl#auto/nl/lawyer>

<sup>9</sup> <https://www.nationaleombudsman.nl/international>

<sup>10</sup> “Since the National Ombudsman is a Dutch institution, all correspondence concerning your complaint will be in Dutch. In case it becomes clear that you do not speak or understand Dutch and that nobody (for instance a lawyer) can assist you, the National Ombudsman will correspond with you in a language you do understand or will provide you with a summary in a language you do understand.”  
<https://www.nationaleombudsman.nl/vraag-en-antwoord/how-to-file-a-complaint-national-ombudsman>

Apparently in Dutch law it is up to an organisation itself whether it allows for English.

Thus LOWI would have the legal right to restrict its use to Dutch for the Dutch.

However, why would LOWI do so ? Why would LOWI suggest that it is *forced* to such policy ?

A question becomes *why* LOWI changed its policy and whether there was adequate consultation with the scientific community, especially when the insistence on the use of Dutch clashes with efficiency and clashes with the very purpose of LOWI to look into cases of integrity of science.

Rather than asking these questions in general, it might be helpful to split them into subquestions with more detail.

## **Question 2. When exactly did LOWI change its position, exactly why and how (part 1) ?**

(2.a) Exactly when in 2013-2017 did LOWI change its position on the use of English ?

(2.b) Can you provide the minutes of the meeting (for this aspect), with listing of the persons involved and clarification of their role in the process ?

(2.c) Were the universities participating in LOWI consulted before the decision and informed after the decision ? Can you provide the texts of such consultation and information ? If the universities were not consulted or informed, why not ?

(2.d) Why has the *Reglement* and *Werkwijze* not been adapted to the “huidige vaste lijn” ? <sup>11</sup>

Do you agree that the *Reglement* is like a constitution for LOWI ?

(2.e) Was the change a decision by LOWI entirely by LOWI itself ? If so, should this not be communicated with the universities ? If they have been informed, when, how ? How did they react?

(2.f) Might it be that changing the *Reglement* might require consultation and information of the participating universities, and when such were absent, that such change then would be impossible ? If this were true, would it still be proper procedure to first consult with the universities before imposing such a “huidige vaste lijn” at LOWI itself ? If this would be proper procedure, then does this imply that the “huidige vaste lijn” must be annulled ?

**Information:** The LOWI committee itself <sup>12</sup> has two professors of law. Chairman Roel Fernhout has contributed to an English text <sup>13</sup> and co-chairman Willem Zwolve too. <sup>14</sup> This does not indicate a bottleneck. Apparently there has been a change of personnel. It seems unlikely that this caused this policy change, but this remains an assumption and has not been verified.

## **Question 3. Exactly why and how (part 2) ?**

(3.a) Is the change of legal personnel at LOWI related to this change of policy at LOWI ?

(3.b) Might it be that the new legal officer is not quite at home in Dutch law, that allows the use of English ?

(3.c) Or might it be that the new officer is not fluent in English ?

**Information:** LOWI seems to suggest that it has been *forced* to adopt this “huidige vaste lijn”.

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<sup>11</sup> A consequence of the current situation is that a petitioner may study the current *Reglement* and *Werkwijze* and decide that it would be most efficient to submit a case using English, only to discover that all this work was for nought, since suddenly LOWI presents the submitter with the requirement of a translation – which goes against the criterion of efficiency.

<sup>12</sup> <https://www.lowi.nl/nl/over-lowi/samenstelling-lowi>

<sup>13</sup> <https://cmr.jur.ru.nl/cmr/docs/family.rd.eu.pdf>

<sup>14</sup> <https://www.universiteitleiden.nl/medewerkers/willem-zwolve/publicaties#tab-4>

Originally LOWI referred to Nationale Ombudsman for complaints. It turned out that LOWI has no real status in Dutch law, and thus Nationale Ombudsman declared itself incompetent for dealing with complaints about LOWI. Then LOWI decided that it would handle such complaints itself. This caused LOWI to emphasize that it has no real legal status but still wants to enforce Dutch law.<sup>15</sup> A reader of these and other texts gets the impression that LOWI had a more involved discussion about its position w.r.t. Dutch law. One may get the impression that LOWI saw itself *forced* to the change on the use of English as well, merely because of the wish to adhere to the Dutch law. On the latter, it however appears that LOWI has a limited understanding of Dutch law. Dutch law allows a submission in English, and the only criterion is that LOWI itself allows it.

#### **Question 4. Exactly why and how (part 3) ?**

(4.a) Does LOWI think that Dutch law *forces* to the use of Dutch, when the two “parties” are both Dutch ? (Excluding experts and witnesses.) If LOWI thinks so, please specify why.

(4.b) If LOWI does not think so (like Nationale Ombudsman clarifies that there is no such force), can LOWI then specify why LOWI adopts this “huidige vaste lijn” ? Please do not answer simply by “because it is more efficient” but specify exactly why which element would be more efficient because of what, and why such gains in efficiency would be more important than anything else.

#### **Information: There seems to be international law**

In general I would suggest that LOWI adopts an international attitude instead of thinking that science in Holland would need to fit only Dutch law. There seems to be international law too.

At ALLEA there is consideration that each nation has its own laws. Would it not be better to consider that all cases are judged on the same rules and conventions ? It doesn't sound very convincing when something would be a breach of scientific integrity in Spain but not in Germany, for example.

#### **Question 5. Exactly why and how (part 4) ?**

(5.a) Did LOWI consider international law ? If not, why not, and if so, can you please provide details.

(5.b) Did LOWI consider that it might be useful that foreigners can follow cases of integrity here in Holland, that it might be useful that the world can follow cases in any particular country, and thus that ALLEA should rather adopt international law too ?

#### **Information: LOWI has the option to translate texts itself**

When elements of a case are in English, then the submitter can have the expert judgement that it is more efficient to submit the whole case in English, so that international colleagues have full information, for their role of experts and witnesses. LOWI could always provide a translation from Dutch into English if needed. Such would be at the discretion of LOWI.

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<sup>15</sup> <https://www.lowi.nl/nl/over-lowi/klachten-over-lowi> : “Bij uitspraak van 17 juli 2015 heeft de rechtbank Amsterdam (ECLI:NL:RBAMS:2015:4472) geoordeeld dat het LOWI geen bestuursorgaan is in de zin van de Algemene wet bestuursrecht. Dat betekent onder andere dat de Nationale ombudsman niet (meer) bevoegd is om klachten over het LOWI in behandeling te nemen (zie No rapport 2015/140). Omdat het LOWI toch zoveel mogelijk de waarborgen van de Algemene wet bestuursrecht in acht wil nemen, neemt het LOWI klachten over het LOWI naar analogie van titel 9.1 van de Algemene wet bestuursrecht zelf in behandeling. De beslissingen die het LOWI naar aanleiding van klachten neemt, worden geanonimiseerd op de website gepubliceerd.” Google Translate: “By judgment of 17 July 2015, the District Court of Amsterdam (ECLI: NL: RBAMS: 2015: 4472) ruled that the LOWI is not an administrative body within the meaning of the General Administrative Law Act. Among other things, this means that the National Ombudsman is no longer (or no longer) competent to handle complaints about the LOWI (see No report 2015/140). Because the LOWI still wishes to comply with the guarantees of the General Administrative Law Act as much as possible, the LOWI itself deals with complaints about the LOWI in analogy to Title 9.1 of the General Administrative Law Act. The decisions taken by the LOWI as a result of complaints are published anonymously on the website.”

A submitter tends to be an expert in a field and might feel that one cannot rely *fully* upon LOWI doing so when it is needed. Having texts available in Dutch only might cause an artificial barrier, so that international experts and witnesses are not heard merely because of the hassle of translation. If LOWI is hesitant about translating texts from English into Dutch then this does not build trust on translating texts from Dutch into English.

It is obviously LOWI who must judge on efficiency as well, but LOWI might respect the professional judgement by the submitter. If LOWI does not respect the professional judgement by the submitter then this does not build trust.

LOWI will not be at home in the field of discussion, and it would be presuming by LOWI when it would impose Dutch in all cases irrespective of efficiency and relevance for integrity of science (also as seen by others than only LOWI).

#### **Question 6. Exactly why and how (part 5) ?**

(6.a) Does LOWI accept the diagnosis that the “huidige vaste lijn” can conflict with the criterion of efficiency in Dutch law ? Or does LOWI regard the term “efficiency” in Dutch law as only a statement that appoints LOWI itself as the sole judge to determine what is “efficient” ? <sup>16</sup>

(6.b) Why does LOWI not include international experts and witnesses in its “huidige vaste lijn” (that only mentions “parties”) ?

(6.c) What does LOWI think about the expert judgement of a submitter that it would be efficient to use English ? Would LOWI be able to respect this expert judgement, or would LOWI insist upon the dogma of its “huidige vaste lijn” that only looks at the linguistic competence of “parties”?

(6.d) While LOWI is obviously appointed as the body that must make a decision on this, within obedience of the *Reglement*, it is also obvious that LOWI only has a role as a judge. There is a difference between a judge who claims to have all knowledge and truth, and a judge who tries to make the best of it. A judge of the first kind would not allow a submitter any freedom of judgement about submitting in English. A judge of the second kind might consider that he or she may not have full information about the efficiency of the process, and thus would allow room for expert judgement by the submitter that English would be most efficient. How does LOWI see itself ?

(6.e) When LOWI made the policy change in 2013-2017 did it discuss the issue of efficiency also in these terms, that a submitter might have the expert judgement that a submission in English would be most efficient ? If so, please provide the details of this discussion. If not, why not ? If not, would it not be relevant for discussion now ?

(6.f) When LOWI made the policy change in 2013-2017 did it mention this (potential) conflict between efficiency and its “huidige vaste lijn” also with the universities ? If so, please provide details of this discussion. If not, why not ? If not, would LOWI consider it relevant to discuss this (potential) conflict with the universities today, so that the *Reglement* and *Werkwijze* might be amended (or the “huidige vaste lijn” abolished) ?

#### **Information. Applicability (opening a case or not) versus efficiency with a procedure**

There is a distinction between the decision to open a case or not (applicability), and the decision taken within a case. See the **Appendix** for the *Reglement* rule 7.5.c and the subphrase “a translation is required for the proper handling of the complaint”.

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<sup>16</sup> One might reason: If a legal body deviates from the use of Dutch, then it must use the term “efficient” as the ground for deviation. There is no external body however to test this efficiency. The term is only used by lawmakers to provide a general stamp of approval that there can be a deviation from Dutch.

### Question 7. Exactly why and how (part 6) ?

(7.a) At what phase in the process can it be judged when this “proper handling” applies ? At the phase of judging on applicability (when little about the actual case is known), or during the phase of actually studying the case (when one gets to know more about a case) ?

(7.b) Would it not be better to have it as a general rule that this criterion only applies for the situation within a case ? Such, that a judgement on the applicability of a case cannot refer to this rule (when a submission is in English or refers to texts in English) ?

(7.c) Would it not be better to also insert a term that only specified parts need to be translated ? Thus, when a case is opened, and the committee looking at it finds that specified parts need to be translated, then they can indicate which parts. Inserting this term in the conditions helps to understand that this overall condition belongs to the realm of handling a case, and not to the realm on judging whether it would be opened or not.

(7.d) Apparently the current rule is in the *Reglement* that was discussed with the universities. Might it be possible to trace how this rule got into the *Reglement* and what the discussion was ? Was it merely a consideration of costs, who would pay for the translation, or was there indeed a notion that cases in English should be blocked when submitter and defendant were all Dutch (at the neglect of experts and the international community) ?

### Information. The influence of lawyers at KNAW / LOWI is too large

At various occasions, it has appeared to me that the influence of lawyers at KNAW / LOWI is too large.<sup>17 18</sup> I have also observed that empirical scientists at LOWI adopt the legal reasoning by the lawyers instead of redressing it. For example in emphasizing a particular procedure instead of focusing on the breach of integrity at hand. There are various philosophies about law, but a good rule of thumb is that law must support rational and fair decision making rather than obstruct it. As soon as legal rules take a life of their own, this forebodes ill. Again, I am not a lawyer, and have my hesitations on this. My inclination is to regard mathematicians as the lawyers of numbers and space. Mathematicians and lawyers seem to have in common that the rules might be taken as more relevant than the case at hand. For empirical science, a key point is the training for observation, that might contradict all that one assumes. There is also A.D. de Groot's suggestion of the scientific forum.<sup>19 20</sup>

### Question 8. Exactly why and how (part 6) ?

(8.a) Would it be possible for the empirical scientists at LOWI to reflect on this diagnosis, both on the use of English and the dominant role of lawyers ? Would they be willing to check with their fellows in empirical science about the use of English in procedures at LOWI on integrity of science, and the contents of this letter ? Would they be willing to report on this as empirical scientists *apart* from their lawyer colleagues at the LOWI board ?

(8.b) In above change w.r.t. the use of English in 2013-2017, was the initiative taken by the lawyers at LOWI or the empirical scientists at LOWI ? And why did the empirical scientists agree with the change, while they know that English is the current language in science, and while they know that insisting upon the use of Dutch only would cause that a case of integrity in science might not be taken into consideration ? If the empirical scientists took the lead of the lawyers, are they willing to recognise that they were dominated by the lawyers at the cost of the very purpose of LOWI, and that they should have looked for other lawyers who would maintain the very purpose of LOWI ?

(8.c) If an empirical scientist submits a case in English, and LOWI would like to see Dutch, might it not be a natural reaction by empirical scientists to either translate to Dutch for the sake of integrity of science, or switch to international law, and to appoint a committee also containing

<sup>17</sup> <https://boycottholland.wordpress.com/2015/11/26/allea-defines-research-integrity-too-narrow/>

<sup>18</sup> <https://boycottholland.wordpress.com/2018/03/13/de-knaw-heeft-teveel-invloed-van-juristen/>

<sup>19</sup> <https://www.knaw.nl/nl/actueel/publicaties/het-forumwaarmed-merk-van-wetenschap>

<sup>20</sup> <https://boycottholland.wordpress.com/2015/11/24/a-general-theory-of-knowledge/>

scientists also outside of Holland to allow for better judgement ? (Both for checking on appropriateness and for investigating the case on content.)

(8.d) Might it be possible for the empirical scientists at LOWI to enact a role-playing exercise,<sup>21</sup> so that each has a turn in setting up a critical website (e.g. advising to boycott Holland till the censorship of science since 1990 by the directorate of the Dutch Central Planning Bureau is lifted) and then submitting a case formulated in English (as this is most efficient given the Reglement and Werkwijze) and then meet with the LOWI legal response because of some undocumented change in 2013-2017 ? You would record your view before the exercise and after the exercise.

This concludes my current enquiry. You have my permission to forward this letter to the universities supporting LOWI to consult with them. While my enquiry is general and open, this very letter itself might still contain information that is sensitive on personal information, and thus this very letter is not an open letter. I might put an anonymised version later on my website. It might also be that your answers would make it more efficient to edit questions and answers. Hopefully you might provide an indication whether you would be able to answer these questions and how long this might take.

Sincerely yours,

Drs Thomas H.A.M. Cool MSc  
Econometrician (Groningen 1982) and teacher of mathematics (Leiden 2008)  
Writing in science under the name of Thomas Colignatus  
(... Scheveningen, Holland,  
<http://thomascool.eu> ....)

## **Appendix: Official texts at KNAW / LOWI on the use of English**

The LOWI reglement 2009-2018 states:

<https://www.lowi.nl/nl/bestanden/LOWIReglement2014.pdf>

"7.5.c. Indien de klacht in een vreemde taal is gesteld en een vertaling voor een goede behandeling van de klacht noodzakelijk is, dient Klager zorg te dragen voor een vertaling."

Google translate: "If the complaint is made in a foreign language and a translation is required for the proper handling of the complaint, the Complainant must arrange for a translation."

Important is: "een vertaling voor een goede behandeling noodzakelijk is" or "a translation is required for the proper handling of the complaint".

Only when the case is opened, then it might be established that a translation is needed.

Thus, this condition cannot be used to block a case from being opened.

The "Werkwijze" rule 4.4 on efficiency supplements above point 7.

<http://www.lowi.nl/nl/bestanden/LOWIWerkwijze2015.pdf>

"Een verzoek kan in de Engelse taal worden ingediend, indien het gebruik daarvan doelmatiger is en de belangen van derden daardoor niet onevenredig worden geschaad."

Google translate: "A request may be filed in the English language if its use is more efficient and the interests of third parties are not disproportionately harmed thereby."

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<sup>21</sup> <https://en.wikipedia.org/wiki/Role-playing> see also <http://lm.systemdynamics.org/products/fish-bank/>

LOWI in 2017 introduces a **new** criterion, by stating (in a particular ruling):

<https://www.lowi.nl/nl/bestanden/LOWIbesluit2017nr.7.pdf>

“Ten aanzien van de te gebruiken taal is de hoofdregel dat de Nederlandse taal wordt gehanteerd. Als dat doelmatiger is, kan het LOWI toestaan dat een verzoek wordt ingediend in de Engelse taal. Dat gebeurt alleen wanneer één van de partijen anderstalig is.” (page 1)

“Verzoeker is uitdrukkelijk gewezen op de huidige lijn van het LOWI om het gebruik van de Engelse taal alleen toe te staan wanneer één der partijen anderstalig is (...)” (page 3).

The summary of the latter in 2017:

<https://www.lowi.nl/nl/bestanden/SamenvattingLOWIbesluit201707.pdf>

“Verzoeker is herhaaldelijk gewezen op de huidige vaste lijn van het LOWI om gebruik van de Engelse taal alleen toe te staan als één der partijen anderstalig is.”

There a tricky legal insertion of the word “huidig” (presently), which introduces a vagueness on the difference between Reglement, Werkwijze, and professor Zwolve’s imposition that this submission should be in English. The latter view however is both an interpretation and a new criterion.