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NOTE

from :	General Secretariat
to :	Working Party on Terrorism
Subject :	Evaluation of National Anti-Terrorist Arrangements Report about the Evaluation of Netherlands, 2-4 February 2004

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Evaluation of Netherlands, 2-4 February 2004

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1. Terrorist situation

1.1. Domestic terrorism

1.1.1. At the moment the Netherlands is not facing domestic terrorism as such.

In the past, the Netherlands suffered from terrorist actions from Moluccan groups. No terrorist acts as such by the Moluccan community in the Netherlands were reported since 1977. However, the authorities and the AIVD continue to pay attention to "Moluccan activism". The 2003 AIVD annual report states that "in 2003 the understandable concern about the situation in the Moluccas did not lead to any radical or violent incidents initiated by Moluccan people, apart from the traditional protest demonstrations".

1.2. International terrorism

1.2.1. No terrorist act as such and/or directly related to international terrorism including Islamic extremist activities was reported in the Netherlands. Currently various investigations are undertaken to persons suspected of the planning of terrorist attacks to targets in the Netherlands.

1.2.2. In the context of 11 September 2001, some events seriously increased the awareness that the Netherlands is not out of the scope of Islamic extremist activities.

- In the light of investigations conducted in Europe following 11 September 2001, it became obvious that the Netherlands can be used as an operational base for terrorist activities¹.

¹ Some cases in the Netherlands following 11 September 2001: September 2001 "Martyr-case Rotterdam" linked to the Trabelsi case, December 2001 "Jawat-case" linked to the assassination of Massoud, January 2002 "Kashmir-case", April 2002 "Lichtstad-case", August 2002 "Hannover-case", September 2002 "Krekar-case", May/June 2003 some smaller cases, October 2003 "Hofstad-case", etc

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- The 2001 BVD (which is the previous name of the AIVD) annual report mentions that "on the basis of BVD information, part of an international terrorist cell that was preparing an attack on an American target in Paris was rounded up in Rotterdam".
- It was noted that Afghanistan veterans living in the Netherlands "are increasingly joined up with the ultra-orthodox sector of established Islamic communities". In addition, as the 2001 AIVD annual report states, "a number of young Muslims who grew up in the West and who are often going through an identity crisis are receptive to recruitment for the armed Islamic fight". It was also noted "that it has become clear that a network of Muslims extremists operating in the Netherlands can directly be linked to the tragic death of two Dutch youths of Moroccan origin who lived at Eindhoven".
- There are activities related to Islamic terrorism and in particular activities in the area of recruitment² and support activities in terms of fundraising³, material and logistical nature⁴. In addition, the AIVD is monitoring around 10 of the country's mosques as potential sources of anti-Western activities⁵.

² Cf the AIVD document whose title is "Recruitment for the jihad in the Netherlands, from incident to trend". In that context, see also the AIVD report of June 2004 entitled "Saudi influences in the Netherlands: links between Salafist missionary work, radicalisation processes, and Islamic terrorism".

³ Cf for instance the AIVD focus on NGO with a charitable or social purpose, e.g. Benevolence International Foundation and the Palestinian Al Aqsa due to its links with the Hamas movement.

⁴ "Networks with an Islamist terrorist character also extend to the Netherlands. In the Netherlands persons who are in any way involved in these networks mainly focus on recruitment of Muslims for the violent jihad by providing false documents, accomadations, etc. We estimate that this group – the composition of which frequently changes – still consists of between one to two hundred people"(2003 AIVD annual report).

⁵ Some mosques and Muslim organisations in the Netherlands have received funds from Saudi Arabia and the Saudi ambassador has pledged full cooperation in preventing funds from his country from being used for terrorist purposes or to incite anti-Western feelings among Muslims.

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In addition to the above mentioned points, the Netherlands is fully involved in the international efforts to fight against terrorism and it hosts many international organisations including EU bodies that could be targeted by terrorist attacks.

However, the general feeling and analyses lead to think that the Netherlands cannot be considered as a top target for the time being but the Netherlands remains at threat. The terrorist attacks of 11 march 2004 in Madrid and the threat to the Italian troops in Iraq gave a major impetus to Dutch counter terrorist policy making due to the existing similarities between all these 3 countries in relation to the attitude that they all adopted in particular in Iraq.

In the light of the terrorist attacks in Madrid both the Minister of Justice and the Minister of the Interior and Kingdom Relations stated as follows: " One cannot exclude the possibility that terrorist organisations will target the Netherlands, as they did Spain, for any attack. (...) Although no indications have been received so far, it is impossible to exclude a possible link between the attack in Madrid and the Netherlands"⁶. And according to a joint communication by the Minister of Justice and the Minister of the Interior and Kingdom Relations to the Chairman of the Second Chamber (31 March 2004), "the Government cannot give any guarantees that the Netherlands will be spared from terrorist attacks (...)".

In this context the AIVD is closely watching the movements of some 150 potential terrorist suspects and pays attention to radical speeches in mosques⁷.

43 persons were arrested in this context including the so-called Rotterdam cell.

⁶ In order to assess the risk to be targeted by terrorist attacks following the bombings in Madrid, "the AIVD and the terrorism unit of the National Police Agency (KLPD) have travelled to Madrid to exchange concrete information".

⁷ Cf the report entitled "Saudi influences in the Netherlands: links between Salafist missionary work, radicalisation processes, and Islamic terrorism", drawn up by the AIVD.

1.3. The plan of action for combating terrorism and promoting security (Actieplan Terrorismebestrijding en Veiligheid) of 5 October 2001⁸.

Because the Netherlands considers that its security is seriously threatened⁹, authorities decided a very wide range of measures in the aftermath of 11 September 2001 and are permanently upgrading counter terrorism measures including the ones against the financing of terrorism¹⁰ and related policies in various domains e.g. alien policy. The aim of the plan of action for combating terrorism and promoting security of 5 October 2001 whose immediate objective was to prevent terrorist attacks contained an important package of measures on a structural and factual basis in order to cover the various aspects of the fight against terrorism. It included in particular preventive measures¹¹ such as the improvement of the capacity to collect relevant intelligence by the police and more importantly by the intelligence and security services in addition to technical measures and more capacity for the protection and security of vulnerable persons and objects. In the police area¹² and pending ad hoc legislation (the 2 Framework Decisions of June 2002), the capacity for investigation and prosecution of terrorist crimes was expanded considerably and for instance the National Police Services Agency (KLPD) and the Public Prosecution Department were reinforced by criminal investigators and analysts.

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- ⁸ Since then, progress reports have been regularly made to the Parliament (for instance the latest and last progress report, number six, was published on 27 June 2003). It was concluded that the existing structures have been strengthened and that most of targets have been met.
- ⁹ "One of the principal threats to national security is the threat emanating from international terrorism with a radical Islamic character" (...). "The fact that the dawa-oriented forms of radical Islam do not have a directly violent character does not mean that they do not represent a serious threat to security". (...) This has prompted the AIVD to widen its focus areas in order to gain insight into the various manifestations of radical Islam and the consequences for our society"(2003 AIVD annual report).
- ¹⁰ This action plan included 45 measures and 14 were dealing with the integrity of the financial sector and the prevention of terrorist financing.
- ¹¹ In line with the conclusions of the JHA Council of 20 September 2001.
- ¹² Including the extension of capacity of intervention units within the National Police Agency and the Ministry of Defence (Royal Netherlands Military Constabulary and Royal Netherlands Marine Corps).

In the financial area¹³, measures were taken in order to increase the financial supervision legislation and enforcement and the investigation of suspect flows of funds: reinforcement of the supervision of the compliance with the Disclosure of Unusual Transactions Act (Wet MOT), the Identification Financial Services Act (Wet identificatie bij financiële dienstverlening), the Sanctions Act (Sanctiewet 1997) and a report obligation for independent (financial/legal) professionals and trust offices as well as regulations on supervision of trust offices and money transfer institutions. Other measures focused on a reinforcement of the financial investigation, the improvement of the exchange of information and an efficient way of reporting information to the Unusual Transactions Reporting Office with respect to terrorism-related subjects.

1.4. Implementation of the action plan.

In September 2002, the Cabinet (Prime Minister) made a statement (letter from the Cabinet on combating terrorism, 10 September 2002) on the implementation of the action plan internally with a particular attention to following points:

- current legislative proposals in order to implement the national and international agreements,
- recruitment and selection procedures at the National Police Agency (KLPD) in order to namely reinforce the regional information desks and to expand the Regional Intelligence Services (RID),
- new measures concerning personal security following the assassination of Pim Fortuyn on 6 May 2002,
- the intensification of information exchange between intelligence and security services both internally and internationally on a bilateral and multilateral basis,

¹³ For instance, it was decided to fully implement the 8 special recommendations adopted by the FATF on 29 and 30 October 2001 by June 2002 at the latest. Following 11 September 2001, the Netherlands issued 3 orders based on the Sanctions Act in order to freeze the assets of persons and organisations listed in the Presidential Order of President Bush, the US Treasury Department list of 12 October and of 7 November.

- the implementation of the various projects in the NBC terrorism area and further steps to be taken in 2002, 2003 and 2004¹⁴
- the implementation of the protection of the vital infrastructure project,
- the creation of a new co-ordinating body (Council for National Security) within the Council of Ministers,
- Islamic terrorism despite the fact that there is no concrete evidence of imminent attacks in the Netherlands or on Netherlands interests abroad with a special focus on the recruitment of young Muslims to the Islamic struggle and umbrella organisations for that purpose at both national and international level,
- And arrests in the Netherlands.

1.5. Recent steps in the counter terrorism area and further steps

Further to the above-mentioned steps, the Dutch authorities adopted new measures in areas related to the fight against terrorism on the basis of a multidisciplinary and integrated approach. For instance in the immigration field¹⁵, the General Director of the Dutch Immigration and Naturalization Service (IND) and the deputy Head of the General Intelligence and Security Service (AIVD) entered into an agreement on 17 June 2003 for the exchange of information. The agreement defines the statutory regulation between the two services (the AIVD may provide information to the IND, which may be of interest when taking decisions pertaining to immigrant law. In addition, the agreement relates to the IND's provision of information regarding persons and organisations to the AIVD and vice versa, from the AIVD to the IND, when this is required for the national security).

¹⁴ In this specific area, cf the NBC project that started in September 2000. Cf the progress report "countering NBC attacks by terrorists" of March 2002.

¹⁵ Cf in April 2003 the report entitled "Aliens policy and counter terrorism/Vreemdelingenbeleid en Terrorismebestrijding" by the Advisory Committee for Aliens Affairs/ACVZ". A particular dimension of proposals is to provide the AIVD with an access to the Alien Service's databases (Basisvoorziening Vreemdelingenketen database).

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Another example is the draft bill that was announced last year and is still to be submitted to the cabinet. According to the proposal, terrorist organisations in the Netherlands that are blacklisted by the EU might be banned by Dutch courts and foreign organisations that are acting in contravention of Dutch public policy might have their activities stopped. The bill will increase the civil law options to tackle international terrorism as well as criminal organisations that use legal persons¹⁶.

Additionally, the Minister of Justice announced at the end of June 2003 a more long-term and new policy targets in another document called "Terrorism and the Protection of the Society" (Terrorisme en de Bescherming van de Samenleving). The Minister expressed concerns about the possible emergence of extremist Islamic terrorism in the Netherlands including both conventional and nuclear, biological, chemical and radioactive terrorism¹⁷. In order to counter this threat successfully it is envisaged more far-reaching means and working methods for the intelligence service, including the possibility to search databases of third parties and to supervise relevant NGOs¹⁸, places of worship and Muslim schools¹⁹.

The Dutch authorities continue to amend this action plan. At this stage and as stated by the Minister of Justice and the Minister of the Interior and Kingdom Relations in a joint letter of 31 March 2004 to the Chairman of the Lower House, "most action points have been completed or the structural basis for them has been laid". In particular, the letter mentions that "the (intelligence and security) services shares information with the investigative authorities for the purpose of tracking down and prosecuting" the terrorists. However, it is also mentioned that "an expansion of capacity (is) necessary in order for these tasks to be carried out properly".

¹⁶ Nota van Wijziging bij wetsvoorstel goedkeuring NGO Verdrag (verbod op rechtspersonen) (prohibition of legal persons).

¹⁷ "In 2002 NBCR terrorism was still mainly seen as a theoretical possibility, but in 2003 a number of groups showed increasing interest in producing and using relatively simple NBCR weapons. The AIVD concluded that there is a real risk of terrorist attacks with relatively simple NBCR weapons"(2003 AIVD annual report).

¹⁸ "A few current points for attention (...is) the prevention of abuse of non-profit organisations. Measures will be initiated to achieve transparency and supervision of non-profit organisations".

¹⁹ "(...) a mechanism must be set up in the near future to ensure transparency and supervision of financing received from abroad".

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- On 22 June 2004, the Parliament passed a law imposing tougher penalties for terrorist related crimes, including longer prison terms for recruiting for militant Islamist groups. The new legislation on terrorist crimes also contained an amendment of Article 205 of the Criminal Code which has made "recruitment for armed conflict" punishable (for instance recruitment for the jihad). Until this amendment, Article 205 was limited only to "recruitment without permission for foreign military service". The maximum sentence of Article 205 has also been increased from one year to four years.
- The Parliament also passed a separate law requiring individuals in the Netherlands to carry identification at all times (Wet Identificatie Plicht starts 1 January 2005).
- As announced by both the Minister of Justice and the Minister of the Interior and Kingdom Relations on 2 April 2004²⁰ in the aftermath of the terrorist attacks of 11 March 2004 in Madrid, the Dutch authorities decided to implement new measures and in particular :
 - to set up an early warning system to inform government agencies, companies and citizens about any increased risk for terrorist attacks within an extremely short period of time,
 - to create an extra capacity to increase tracing, monitoring and disrupting individuals who are internationally considered to be potential terrorists.

²⁰ Cf the letter from the Minister of Justice and the Minister of the Interior and Kingdom Relations submitted to the Lower House on 2 April 2004.

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- In the area of intelligence gathering, important changes could take place if adopted by the parliament: extension of the role and competence of the AIVD services on the basis of new legal provision, registration and surveillance (financial means) of non profit organisations, obligatory co-operation of governmental agencies with law enforcement bodies and intelligence agencies when requested, etc²¹.
- In the police area in terms of personal data, a proposal has been made in March 2004 to review the Police Files Act in order to improve police performance in the area of processing personal data. Current problems are mainly related to the use of data within the police and with the possibilities to provide data to third parties (this latter dimension also applies to the providing of information by the AIVD). The aim is to allow connection of the data available with one another, where possible, to use data on people from one case for another case, if required, and this is only possible in a limited way for the time being. Another aim of the draft Bill is to extend the search options for the available police records and to avoid overlapping investigations. The Bill intends to provide a basis for a targeted processing of personal data using issues to be laid down in a governmental decree including providing personal data to third parties. The draft Bill also introduces a system of authorisation for privacy reasons of the citizens involved and privacy officers would be appointed to check the personal data processing within the police forces. The Data Protection Board will monitor compliance with the new Act.
- As EU Presidency, the Netherlands' Ministry of Finance announced that there will be initiatives in the field of money laundering, information about money transactions, cross border cash couriers, originator information on wire transfers and abuse of non profit organisations.

²¹ CF also the proposal made by the Minister of Justice (letter of March 2003 to the Lower House) to use criminal civilian infiltrators in exceptional cases and under very strict conditions where this is essential to prevent terrorist activities. This would only concern criminal investigations in order to bring suspects before the court and not intelligence and security services investigations.

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In addition to the legislation adopted in the aftermath of 11 September 2001, the Netherlands adopted appropriate laws on the implementation at national level of the two Framework Decisions of 13 June 2002²² on Terrorism²³ and the European Arrest Warrant²⁴. Other legal provisions have been adopted²⁵ or are expected in the near future in order to properly reinforce the fight against terrorism in the Netherlands²⁶.

- ²² Crimes of terrorism Act (Wet terroristische misdrijven). Recruitment of fighters for the Islamic armed struggle or jihad and conspiracy with the intent to commit a serious act of terrorism will each be made a separate punishable criminal offence under the Act. The Act complies with the provisions of the EU Framework Decision on combating terrorism. The recruitment of jihad fighters has been made a punishable criminal offence by amending Section 205 of the Dutch Penal Code. The recruitment of fighters for the armed struggle will be punishable even if it is yet unclear whether the person who has been recruited may want to contribute to the armed struggle in any organised way. In addition, conspiracy to commit serious acts of terrorism will be made a separate punishable criminal offence.
- ²³ The Crimes of Terrorism Act entered into effect on 10 August 2004 with consequences as follows : the maximum penalties for offences such as murder, serious assault, hijacking and abduction will be higher if offences are committed with a terrorist aim. In most cases the maximum penalty may be increased by 50%. The maximum penalty for recruiting people to join the dihad will go up from 1 year to 4 years and conspiracy has been made a separate offence.
- ²⁴ The Act on the EAW took effect on 12 May 2004.
- ²⁵ In March 2004, the Parliament agreed to Minister of Justice's legislative proposals to approve and implement the EU Mutual Assistance Convention, concluded in Brussels on 29 May 2000 as well as the protocol.
- ²⁶ For instance, in February 2004, the Minister of Justice submitted to the Parliament a Bill that aims at reinforcing the access of law enforcement bodies and justice authorities to get more powers for requesting personal data from public institutions and companies when this is required for the investigation. According to the Bill, the result will be that an investigating officer will be able to request "identifying" information in addition to name, address, place of residence, date of birth or sex. This means that he will ask for someone's client number, policy number or bank/giro account number. It will also be possible to request other information data on services provided, such as the length, dates, place and nature of the service provision and information on accounts and other payment transactions. The bill also provides the opportunity to demand so-called sensitive information such as someone's religion, race, political affinity, health or sex life. As a result, the Public Prosecutor may only use this power if he meets certain more important conditions, such as a prior authorisation from the examining magistrate. Based on the proposed powers, justice authorities and law enforcement services may also collect other information than from the suspect only. This information may include data regarding the victim of third parties with which the suspect had contact which could contribute to a positive completion of the investigation. Cf also the draft Bill (March 2004) by the Minister of Justice – also acting on behalf of the Minister of Defence and the Minister of the Interior and Kingdom Relations – which consists of a review of the Police Files Act.

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Prior to the adoption of the two above-mentioned Framework Decisions, the act of terrorism as such had no existence in the Penal Code and "acts with terrorism purposes" were criminalised and prosecuted on the basis of criminal laws. This applied in particular to:

- Recruitment to terrorist groups (cf articles 131 and 132 and the incitement to criminal offence or violent action against the public authorities. Cf now article 205 as amended on recruitment for the jihad).
- Participation in a criminal organisation²⁷ (cf article 140. Cf now new article 140a)
- Financing of terrorism was a criminal offence and prosecuted in various ways (cf article 46 of the Penal Code on preparations for a criminal act, article 140 on participation in a criminal organisation and article 46a and 47 on participation in an offence such as conspiracy to incite a terrorist offence. Cf also article 51 on the liability of natural and legal persons²⁸).

1.6. Highlight.

The trial in Rotterdam in May 2003 of twelve suspected Islamic militants accused of assisting al-Qaida posed a vital question to the capacity of the Dutch system to prosecute and sentence suspected terrorists when intelligence is used as evidence in Court in the absence of a specific legislation. As mentioned in the 2003 AIVD annual report, "the fact that the court released suspects who were arrested for involvement in terrorist activities on the basis of AIVD information led to questions about the value of AIVD information".

²⁷ Lists of terrorist organisations are used in the field of intelligence and investigation and in the monitoring of financial flows.

²⁸ Concerning legal persons, cf the Dutch projects regarding entities, movements and networks that are blacklisted and legal consequences on the Civil Code and the Sanctions Act 1977 that will be amended for that purpose. The Sanctions Act 1977 will be amended to thwart activities of terrorist networks and movements that do not have legal personality by creating specific prohibitions of such groups.

The Public Prosecutor was forced to water down the charges and to ask prison sentences of up to three years for recruiting Muslims to fight in the Jihad.

The Public Prosecutor had to face a lack of evidence²⁹ and what remained for all twelve suspects was the charge of membership of a criminal group. In addition, due to the fact that the Public Prosecutor failed to back up the information partly provided by the AIVD³⁰ with sufficient evidence of his own³¹, as required by Dutch law, the judges also said there was insufficient evidence to warrant convictions on allegations that the four Muslims were involved in an al-Qaeda plot to bomb the US embassy in Paris³². The Court acquitted French national Jerome Courtailler, Algerians Abdelghani Rabia and Adel Tobbichi and Dutch national Saaïd Ibrahim.

The Court considered that it was impossible to assess the factual accuracy of information provided by the AIVD due to the fact that it is impossible to assess the source of the information provided by the AIVD³³. Consequently, it was considered that the contents of the reports from the AIVD attached to the record should not serve as evidence for any offences with which the accused were charged.

²⁹ Most of the evidence was gathered during the police raids on two Rotterdam apartments, based on a tip from the intelligence services.

³⁰ The AIVD refused to identify its sources.

³¹ Information provided by the AIVD cannot be checked or verified in a criminal procedure, "or only to a limited extent".

³² The same Rotterdam court acquitted four other terrorist suspects in December 2002, who had been arrested in the same manner. Due to the fact the AIVD did not reveal the source of its information, the evidence could not therefore be corroborated, prompting the Court to order the release of the suspects.

³³ "(...) the obligatory protection of sources and methods imposes restrictions on the disclosure of AIVD information in legal proceedings"(2003 AIVD annual report).

Finally, in June 2004, two men - Rabia and Courtailler were sentenced to jail by the Court of Appeal in The Hague for links to a group that planned to attack the US embassy in Paris and convicted of running a support network for the group, funded by credit card fraud and dealing in false documents³⁴.

The Court of Appeal also ruled for the first time that confidential information gathered by the AIVD can be the basis for a suspicion and a criminal investigation and that the information can be admissible in court if it is obtained legally, is accurate, and when the defence has been given opportunity to examine the evidence. It was also the first time that Islamic militants have been found guilty of involvement in terrorism in the Netherlands.

2. Structures of authorities

2.1. General structures

- 2.1.1.** The Constitution currently ruling the Netherlands was adopted in 1848 and has been amended several times, and recently on 17 February 1983. It does not refer to terrorism.

The Kingdom of the Netherlands is a constitutional monarchy³⁵ with a parliamentary system. The government is based on the principles of ministerial responsibility and parliamentary government. The government comprises three main institutions: the Monarch, the Council of Ministers, and the States General.

³⁴ They were considered as parts of the the second ring – those that are mainly involved in logistical support, fund-generating crime and falsification of documents – if one refer to the theory of circles, by contrast with the first circle (core) that includes terrorist perpetrators and the third circle that includes sympathisers.

³⁵ Since 1815. In other words, it very often considered that the Netherlands is a classic example of a consociational state, this means a state which has major internal divisions along ethnic, religious or linguistic lines, yet nonetheless manages to remain remarkably stable, due to consultation between the elites of each of its major social groups.

2.1.2. The head of the government³⁶ is the Prime Minister who presides over the cabinet and is also Minister of General Affairs.

2.1.3. The Council of Ministers or cabinet³⁷ is responsible for defining, planning and implementing the government policy. Most ministers head ministries³⁸.

The cabinet³⁹ consists of the Prime Minister/head of government, other ministers and state secretaries when appointed by the Head of State (Monarch of the Netherlands).

2.1.4. The Council of State is a constitutionally established advisory body to the government that consists of members of the royal family and Crown-appointed members generally having political, commercial, diplomatic, or military experience. The cabinet must consult the Council of State on proposed legislation before a law is submitted to the parliament⁴⁰.

2.1.5. The parliament⁴¹ (the Staten Generaal, the States General) consists of the Lower House (Tweede Kamer, or Second Chamber) that is the main chamber of Parliament, where discussion of proposed legislation and review of the actions of the cabinet takes place and of the Senate (Eerste Kamer, or First Chamber). The First Chamber cannot initiate or amend legislation, but its approval of bills passed by the Second Chamber is required before bills become law.

³⁶ Article 42 of the Constitution states that the Government comprise "the King and the Ministers". However, the same article states that "the Ministers, and not the King", are "responsible for acts of government".

³⁷ Article 45, paragraph 1 of the Constitution states that ministers collectively form the cabinet. The cabinet is the forum for discussions and decisions on overall government policy and ensures policy coherence.

³⁸ However, ministers-without-portfolio exist.

³⁹ The Monarch and the cabinet together are called the Crown. The ministers, collectively and individually, are responsible to the Parliament.

⁴⁰ The Council of State also serves as a channel of appeal for citizens against executive branch decisions.

⁴¹ There is a parliamentary Committee on the Intelligence and Security Services. The Minister of the Interior and Kingdom Relations met this Committee on 7 occasions in 2003 in order to discuss various points related to the role and activities of the AIVD including Islamic terrorism.

2.1.6. The Netherlands is divided into 12 administrative regions, called provinces which are divided into 489 municipalities (gemeenten)⁴². A locally elected provincial council governs each province as well as a provincial executive appointed by members of the provincial council. A Queen's commissioner appointed by the Crown formally heads the province. The strongly decentralised organisation of the country has consequences on the organisation of authorities at both central and local level and in particular at law enforcement level.

2.2. The Judiciary (Judicial System)

Responsibility for the administration of justice lies with the independent Judiciary. Judges sit in all the courts and trials by jury do not occur.

2.2.1. Courts

The Court organisation consists of:

- 62 cantonal courts which have jurisdiction over many minor criminal and civil matters,
- 19 district courts which handle more serious offences and also hear appeals from the lower Courts,
- 5 Courts of Appeal and a Supreme Court (Hoge Raad) which is the final Court of Appeal and hears appeals in cassation on a point of law only.

⁴² A number of islands in the Caribbean Sea are dependencies of the Netherlands: five islands composing the Netherlands Antilles (Nederlandse Antillen) which are Curaçao, Bonaire, St. Maarten, St. Eustatius and Saba, and Aruba, formerly part of the Antilles.

2.2.2. The Public Prosecutions Service

The Public Prosecutions Service (OM) is independent of the judiciary and falls under the authority of the Minister of Justice. The Board of Procureurs-General of the Ministry of Justice heads the Public Prosecutions Service and deals with policy matters. The Public Prosecutions Service consists of 19 district public prosecutor's offices, one national public prosecutor's office and one functional public prosecutor's office. The Courts of Appeal have an Advocate-General's Office attached to them. The Supreme Court has its own Prosecutor's general office, which is independent from the Minister of Justice and is not part of the Board of Procurators-General.

2.3. Political and security structures.

2.3.1. Prime Minister and the cabinet

The Prime Minister/Minister for General Affairs is involved in the fight against terrorism, following his general responsibility for co-ordination.

2.3.2. Co-ordination of the fight against terrorism at Prime Minister/cabinet level

The management of terrorism and counter terrorism issues at cabinet level in terms of co-operation and co-ordination of all security sectors as well as others ministerial sectors takes place as follows on the basis of recent amendments and improvements:

The council of ministers/cabinet is supported by and comprises two sub-committees which are the appropriate rooms for dealing with terrorism at political level:

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- The Council for Security and Legal Order (Raad voor de Veiligheid en Techtsorde/RvdVR) under the chairmanship of the Prime Minister (as from August 2002) deals with security matters, including the fight against terrorism. It consists of ministers whose role is to prepare decisions on security issues in particular related to terrorism⁴³. In August 2002 the Ministerial Steering Group on the Fight against Terrorism and Security (MSTV)⁴⁴ which was set up under the chairmanship of the Prime Minister on 18 September 2001 was merged in the Council for Security and Legal Order.
- On 19 May 2004, the cabinet agreed to establish a Council for National Security (RNV)⁴⁵. This new cabinet subcommittee has the responsibility to handle all aspects of combating terrorism and intelligence and security services to be discussed at Government level. It is now the right place for political co-ordination of counter terrorism. The RNV consists of the ministers who are most directly involved in this respect: the Prime Minister, the vice-Prime Ministers, the Minister of Justice, the Minister for the Interior and Kingdom Relations, the Minister for Foreign Affairs, the Minister for Defence and the Minister for Immigration and Integration. It deals with policy and implementation of comprehensive security policy (nationally and internationally, including the areas of emergency management, combating terrorism and law enforcement). The Council will meet each month. The Joint Counter Terrorism Committee (GCT), which consists of all government services involved in the fight against terrorism, supports the RNV.

⁴³ In addition to the Prime Minister, chairman, members are Ministers of the Interior and Kingdom Relations, Justice, Public Housing, Transport, Public Health, Foreign Affairs and Defence.

⁴⁴ This group was tasked with the definition of the action plan of 5 October 2001.

⁴⁵ It replaces the previous Council for Intelligence and Security Service (Raad voor de Inlichtingen en Veiligheidsdiensten or RIV).

- The Committee of Dutch Intelligence Services (Comité Verenigde Inlichtingendiensten Nederland or CVIN) within the Ministry of General Affairs co-ordinates the activities in all domains of the intelligence (MIVD) and security (AIVD) services. This Committee is chaired by the co-ordinator for the intelligence and security services who is the Secretary General of the Ministry of General Affairs (Prime Minister's Office). The director general of the MIVD, the director general of the AIVD and representatives of the ministries of Interior Affairs and Kingdom Relations (Director General for Public Order and Security), Justice (Director General for Law Enforcement) and Foreign Affairs (Director General Political affairs) are members of the CVIN. Other ministries may be invited to the meetings and deliberations when needed. The CVIN met on 7 occasions in 2003.

2.3.3. Co-ordinating Minister

- 2331.** By contrast with the previous situation, it was decided in 2003 that the Minister of Justice will act as a co-ordinating minister and will be responsible for the way in which terrorism is to be dealt with⁴⁶. This political co-ordination primarily takes place within the Council for national security (RNV) and the Minister of Justice must act in close co-ordination/co-operation with the Minister of the Interior and Kingdom Relations. However, this does not mean that the basic rule is abandoned: each minister remains responsible for his/her own policy area and apart from the Prime Minister, there is no hierarchy within ministers⁴⁷.

⁴⁶ This does not mean that there is a specific centralised responsibility and authority for combating terrorism.

⁴⁷ For instance the Minister who is competent for security/safety measures regarding the airports is the Minister of Transport.

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- 2232.** In addition to this and to his overall responsibility for the public Prosecutions Service, the Minister of Justice also appointed a national co-ordinator for combating terrorism in April 2004. His tasks are to co-ordinate and monitor for the Minister of Justice and the Minister of the Interior and Kingdom Relations the co-operation between the relevant ministries. He also chairs the Joint Committee on Terrorism (GCT). In this context, he may make suggestions as to the streamlining of work processes, the amending of regulations and, where necessary, the improvement of international co-operation.
- 2233.** The Board of Procurators General of the Ministry of Justice is directly attached to the Minister via the Secretary General of the ministry and is the Public Prosecutions Service's highest authority. Its role is to lay down policy on investigation and prosecution including guidelines on the relation between the national Public Prosecutor for terrorism and the security and intelligence services.
- 2234.** In the area of terrorism, the Board of Procurators General has appointed two national special Public Prosecutors who only deal with (domestic and international) terrorism⁴⁸ and a national Public Prosecutor for the fight against the financing of terrorism. In his/her field of competence, the national Public Prosecutor for Terrorism (LovJ) co-ordinates the fight against terrorism⁴⁹ and in addition to the traditional role about supervision of criminal investigations by the police, he/she is the contact point for the AIVD. The national Public Prosecutor for Terrorism acts as a hub and as a green light uphill from the criminal investigations⁵⁰.

⁴⁸ Cf The Intelligence and Security Act 2002 and in particular article 38. Cf also the Guidelines for Provision of Information by and to the AIVD and the MIVD of the Board of Procurators General.

⁴⁹ The Public Prosecution Service is responsible for investigating and prosecuting crime and exercises authority over the police.

⁵⁰ This pivotal role is essential, as it has been for instance highlighted by the Rotterdam decision.

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The national Public Prosecutor for Terrorism :

- Assesses⁵¹ the correctness and relevance of the information provided in writing by the AIVD,
- Passes the AIVD report (he does not pass the confidential attachments) to the district Public Prosecutor in order to start the prosecution and/or in order to launch police investigations.
- Has regular meetings with the AIVD and the police (KLPD/UTBT) in order to avoid overlaps in particular. Co-ordination of activities takes place on an ad hoc basis or on the basis of meetings of the Consultation Group for Counter Terrorism Co-ordination that he/she chairs.

2235. The Ministry of Justice (representatives of) also chairs various co-ordinating bodies as follows:

- The Coordinating Group on Counter-terrorism (Coördinerend Overleg Terrorismebestrijding or COTB)⁵², chaired by the deputy Director-General for Law Enforcement within the Ministry of Justice is a recently created body⁵³. It has no directive role or function and meetings take place every six weeks.⁵⁴. Members are the heads of counter terrorist units of the operational services. The AIVD, the MIVD, the National Police Services Agency (KLPD) and other law enforcement bodies and entities (Fiscal Intelligence and Law Enforcement Service (FIOD), Customs, Immigration and Naturalisation Service (IND), national co-ordinator for Crisis Management, the Royal Netherlands Military Constabulary (KMar), the National Co-ordinator for Security (NCBB) and the National Public Prosecutors for Terrorism are part of the COTB.

⁵¹ The Public Prosecutor for Terrorism can verify the contents of the AIVD reports on the basis of confidential documents attached to it.

⁵² Both the COTB and the GCT are recently created bodies. They are mentioned in the white paper on "Terrorism and the protection of society".

⁵³ The COTB was created in 2002. The AIVD holds the secretariat.

⁵⁴ Meetings depend on the agenda or political interest.

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The COTB, which acts as a consultation and co-ordinating body reports to the Joint Committee on Terrorism (GCT). The COTB has a broad approach of terrorism issues and related issues including immigration, integration of minorities, etc.

- The Joint Counter Terrorism Committee (Gezamenlijk Comité Terrorismebestrijding or GCT) is a multidisciplinary group at DG level whose role is to support the Council for National Security (RNV). It focuses on policy and political issues regarding counter terrorism. The recently nominated national co-ordinator for combating terrorism chairs this committee whose other members are the Director-General for Public Order and Security within the Ministry of the Interior and Kingdom Relations, the deputy Secretary General and the the Director General for the Tax Service (Ministry of Finance), the Director General of Political Affairs (Ministry of Foreign Affairs), the Director for Legal Affairs within the Ministry of Defence, the security counsellor of the Ministry of General Affairs, the chairman of the Board of Procurators General of the Public Prosecution Service, the heads of the AIVD, the MIVD, the KLPD and Kmar. The GCT aims at transforming political guidelines and policies into administrative and operational guidelines for the various administrative authorities⁵⁵. It reports to both the RIV and the RvdVR. The working consultative group on terrorism (COTB) supports the Joint Counter Terrorism Committee in order to make sure that operational services are involved and to fully report to the Parliament⁵⁶.

⁵⁵ The GCT also deals with aspects of the fight against the financing of terrorism.

⁵⁶ This consultative group on terrorism was created in summer 2003. At the time of the evaluation the GCT and the consultative group met 3 times

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- The Consultation group for Counter Terrorism Co-ordination supervises the co-ordination of activities of AIVD (Democratic Legal Order Directorate, which also holds the secretariat) and KLPD (UTBT) under the authority of the Public Prosecution Service. It is chaired by the National Public Prosecutor for Terrorism. This committee deals with both strategy and specific operational matters.
- The FEC working group on Terrorism and Terrorist Finance (FEC werkgroep terrorisme en financiering van terrorisme) is a specialist group that is chaired by the national Public Prosecutor for the Financial Intelligence Unit.
- It has to be also mentioned that in accordance with the Co-operation on Combat Terrorist Crimes Regulations the national Public Prosecutor for Terrorism heads the investigations of the Counter Terrorism and Special Tasks Unit (UTBT) within the National Police Services Agency (KLPD).

2.3.4. Other Ministers⁵⁷

2341. The minister of the Interior and Kingdom Relations is responsible for the arm's length management of the 25 regional police forces, has a political responsibility for the AIVD and is directly responsible for management of the National Police Service (KLPD). In cases where this management involves the enforcement of the criminal law or the performance of police duties for the justice authorities, the Minister of the Interior takes decisions jointly or after consultation with the Minister of Justice" who is politically accountable for the enforcement of criminal law. He is responsible for upholding standards (quality standards or best practice) and provides an infrastructure for security providers. Consequently, his responsibility is to provide with regulations governing financial management in the regional police forces, their terms of employment and equipment. The Minister appoints high-ranking police officers such as chiefs of police and fosters liaison among them at national level. He also allocates the police budget among the regions and monitors (with the Minister of Justice) their financial management.

⁵⁷ The report does not refer to all ministries involved in fighting terrorism and mainly focus on ministries dealing usually with JHA. Other ministries involved in fighting terrorism (Transport, Public Health...) acts in their respective fields of competence and are responsible for their own policy areas. The experts are aware of the contribution from other ministries.

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Within the Ministry of the Interior and Kingdom Relations, the relevant ministerial department dealing with police issues is the Directorate of Safety (DGV) that replaces the previous Directorate-General for Public Order and Safety (DGOOV).

It carries central responsibility for the policies and quality of the police service and is responsible for ensuring that the police is able to function adequately by creating proper parameters such as terms of employment and administrative/legal measures⁵⁸.

The police in the Netherlands have two main functions:

- maintaining public order and security and rendering assistance to those who need it and
- enforcing criminal law and performing policing duties for the justice authorities.

The police are actually serving two masters. In matters concerning public order and safety and rendering assistance the leading authority is locally the mayor of the municipality in which the police acts and the Queen Commissioner of the province where they act. The minister of the Interior is responsible at a central level for public order and safety. In matters concerning criminal law the police acts under the authority of the public prosecutor. The minister of Justice is responsible for the work of the public prosecutor. Authority therefore over the police is determined by the nature of the police work. Tripartite consultations on policing are held very often on a structural base by the mayor, the public prosecutor and the head of the local police in every police region (25). This is the so called Evaluation Triangle. However, the formal leadership of the police force itself is in the hands of the heads of the regional police and the district Public Prosecutors in the area of investigations.

⁵⁸ However, it is planned to amend the Police Act in order to allow the Minister of the Interior and Kingdom Relations to take more direct responsibility for managing the police forces. In 2004, the Cooperative Arrangements Bill (on Police) that enables police forces to work more closely is to be introduced in the Parliament (cf guidelines related to the budget of the Ministry for the Interior for 2004).

2342. The Minister for Finance is involved in the area of the fight against the financing of terrorism.

2343. The Minister for Defence has also to be mentioned due to his responsibility for the Defence Intelligence and Security Service (MIVD)⁵⁹.

2.3.5. Co-ordination of the fight against terrorism in specific areas

In addition to the various already mentioned co-ordinating bodies and working groups, other mechanisms for co-operation and co-ordination are :

- The Consultation Group for Security (Afstemmingsoverleg Bewaking en Beveiling) that supplies the national co-ordinator for crisis management (NCBB) with threat assessments and in particular terrorist threat assessment and is chaired by the national co-ordinator (who is also member of the COTB). Members are AIVD, MIVD and DNRI.
- The Directing Group on CBRN Terrorism (regiegroep NBC terrorisme) is a specialist group chaired by the Ministry of the Interior and Kingdom Relations, whose role is to prevent and co-ordinate appropriate measures in this specific area.
- The Evaluation Group (that is also called the Evaluation Triangle) deals with recommendations and security measures at high official level when information about a potential terrorist threat is announced at national level. This Evaluation Group consists of representatives of ministers of Justice, the Interior and Kingdom Relations, Foreign Affairs and Defence⁶⁰.

⁵⁹ The Ministry of Defence and the MIVD were out of the scope of the evaluation pursuing to a decision of the CATS. The Netherlands distinguish three pillars in the law enforcement and intelligence machinery and include the MIVD.

⁶⁰ In such a case measures are decided on an ad hoc basis (the national crisis control guidelines and the role of the NCC). The Board of police chiefs (RHC) assisted after 9/11 the Evaluation Group by issuing scenarios.

3. The law enforcement and intelligence machinery

The two pillars that compose the law enforcement and intelligence machinery (in the context of the evaluation) are the Dutch police and the General Intelligence and Security Service (AIVD). They both act under the political and administrative supervision of the Minister of the Interior and Kingdom Relations⁶¹ and both have been reformed over the recent years in order to substantially increase security of the Netherlands (national security) and security/safety of citizens in particular in the area of terrorism in the context of 11 September 2001. When the KLPD and regional police forces are investigating criminal offences, they both act under the authority of the Public Prosecutions Service (district Public Prosecutor and the national Public Prosecutor for Terrorism in the area of terrorism).

3.1. The Dutch police

The Dutch Police consists of 25 regional police forces and the National Police Services Agency (Korps Landelijke Politiediensten/KLPD) that is the 26th police force. In general terms, the police is obligated by law to provide information to the AIVD when related to national security including terrorism (in accordance with article 62 of the Intelligence and Security Act 2002). At the opposite, the AIVD has no statutory obligation to provide information to both the national Public Prosecutor for Terrorism and the police⁶².

⁶¹ KLPD is considered as semiautonomous, by contrast with regional police forces that are largely autonomous at functional level. This is in compliance with the general philosophy of policing in the Netherlands, which favours a decentralised approach of police tasks including investigative ones (criminal investigations).

⁶² For instance the AIVD is not forced to make available all files and elements and in particular to identify its sources. Art. 38 Wiv states that if during the processing of the information or on behalf of a service it appears that certain information may also be relevant to the investigation or prosecution of offences, the relevant Minister or the head of the service on behalf of the relevant Minister, can, without prejudice that there is a statutory obligation to do so, give a written notification to the appropriate officer of the Public Prosecutions Department. It also states that all the information on which the notification is based which is necessary in order to access the correctness of the notification may be inspected. The articles 85 and 86 are applicable by analogy.

3.1.1. The regional police force

Each regional police force⁶³ :

- includes a Criminal Intelligence Unit (Criminele Inlichttingen Eenheid/CIE) which is responsible for collecting and processing information⁶⁴ and intelligence related to criminal offences (serious crimes and in particular when the crime is punishable by a prison term of more than 8 years)
- has a regional intelligence service (Regionale Inlichtingen Dienst or RID) which performs activities for and on behalf of the AIVD⁶⁵ in accordance with the instructions of the head of the AIVD⁶⁶ and which performs activities in the field of public order and safety for the head of police. Therefore the RID has two functions. The RID act as part (regional offices) of the AIVD. Members of the RID are specifically appointed in accordance with article 60 of the Intelligence and Security Services Act 2002 (Wiv 2002). The RIDs have access to the police databases and are connected to all police networks including in particular the community police network. This allows the detection of and the identification at early stage of the factors facilitating radicalism and persons who are in a process to turn into terrorist activities or supporting activities related to terrorism. Information the RIDs collect is only provided to the AIVD and is not made available to other police bodies. The other line of work of the RID, the work for the police can be made available to other police bodies.

⁶³ As well as the National Police Services Agency/KLPD. At national level, there is a national unit, the National Criminal Intelligence Service (NRI) within the KLPD.

⁶⁴ Cf the CIE Regulations that define uniform rules for the processing of information, mutual information exchange and provision for the information of the National Criminal Intelligence Unit.

⁶⁵ Both the RIDs and the AIVD are part of the "Quality Project for Regional Intelligence Service" that was started late 2002 on the initiative of the Board of Commissioners. This project, which is part of the "National Information Coordination Project DNP" focus on "quality aspects in relation to the Regional Intelligence Services, relating to both their police duties and their activities for the AIVD". The outcomes of this project that is to improve co-operation between the police and the AIVD, will be implemented in 2004.

⁶⁶ The other main task of RIDs is to collect information in the area of public order and the safety of society. Despite specific links with the AIVD, the RIDs have a large autonomy in terms of organisation and they all gather information on Islamic terrorism.

3.1.2. The National Police Services Agency (Korps Landelijke Politiediensten/KLPD)

The KLPD provides support to the regional police forces but the principle is to limit its action to what is necessary and carries out national and specialist police tasks. In that domain, the KLPD is for instance the national co-ordination point for terrorist-based requests for legal assistance and criminal investigations into terrorism (and political activism) in addition to crime from a financial/economic perspective. It collects, files, processes, manages, analyses and distributes (criminal) information, and carries out other support tasks.

In the counter terrorism area, it also developed national tools and relevant KLPD departments is the Counter Terrorism and Special Tasks Unit (Unit Terrorismebestrijding en bijzondere taken van het KLPD/UTBT)⁶⁷.

3121. The Nationale Recherche is a task force for the fight against organised crime, including terrorism.

3122. The Counter Terrorism Unit (UTBT), which is under the responsibility of the national Public Prosecutor for Terrorism⁶⁸, is part of the National Crime Squad (DNR) since 1 July 2003. This unit is responsible for information gathering, recording and processing in terms of investigation and prevention of terrorist acts (international terrorism, Islamic terrorism and national threats) and also deals with political radical activism. The UTBT consists of clusters dealing with various forms and violent activisms such as the cluster on national terrorism e.g. animal rights activism and left wing, the cluster on the Turkish terrorism and "European terrorism". A specific cluster focuses on Islamic terrorism. In addition the organisation include 3 persons "under article 60" (of the Act on Intelligence and Security Services of 7 February 2002). These 3 persons are the interface with the AIVD and they act as a regional intelligence service (RID). These persons act as interface with the AIVD.

⁶⁷ The UTBT finds its legal basis in the Cooperation on Combat Terrorist Crime Regulation. UTBT can deal with tactical investigations for terrorism and also regional forces can do that, through the LOVJ.

⁶⁸ The national Public Prosecutor selects each year the "targets" to be dealt with.

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On the one hand they take care of passing relevant information from UTBT to the AIVD. On the other hand they have access to the database of the AIVD and act as additional 'ears and eyes' of the national public prosecutors for terrorism to see whether certain information of the AIVD may be relevant to the investigation or prosecution of offences. The national prosecutors however remain the exclusive officials who can pass on any information from the AIVD for the purpose of a criminal investigation or prosecution. To achieve its objectives, the UTBT manages a specific database that was recently created which is provided with "police information" including criminal information from the police and in particular from the regional police forces. However, The UTBT is modestly staffed (26 persons)⁶⁹. At this point UTBT is being expanded to become a unit of 42 persons

In the field of exchange of information and data and in addition to a National Criminal Intelligence Service⁷⁰, the KLPD has a recently created a National Information Centre (National Information Knooppunt or NIK) which collects information provided by regional police forces and other law enforcement bodies.

⁶⁹ Including the head of the Unit and the head of the team. Other members are investigators (14), analysts (4), assistant investigators (3). To overcome this limitation 37 officers in the national crime squad (DNR) are trained and experienced in counter terrorism and carry out operations on demand of the UTBT.

Concerning relations between the regional CIE and the national CIE within the KLPD, cf the Criminal Intelligence Units Regulations that provides for uniform rules for the processing of information, mutual exchange of information. The national CIE is provided with information when related to serious crime and when information is of national and international importance.

3.2. The General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst/AIVD)

The AIVD is the Security Service of the Netherlands and one of the 6 Directorate General of the Ministry of the Interior and Kingdom Relations. The Minister "determines the focus areas and renders account of the work of the AIVD to parliament" (2003 AIVD annual report).

The AIVD members have no law enforcement competence and cannot investigate criminal offences in accordance with article 9 of the Intelligence Act 2002.

In general terms, the AIVD contributes to the protection of national security⁷¹.

Consequently, fight against terrorism is the first priority of the AIVD. To that end the AIVD collects information on individuals and organisations that pose a threat to the democratic legal order, the security or other vital interests of the state and gives advice on security measures against impairment of national security.

⁷¹ "Most of developments in the field of national security have an international character. (...) The AIVD alerts authorities and society to specific threats, but also to developments that may have repercussions on national security. Authorities and society expect us not only to point our security risks, however, but also to initiate measures to prevent these risks. The role of the AIVD has therefore increasingly become that of a security advisor, in addition to its traditional watchdog role" (2003 AIVD annual report).

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The current legal basis is the Intelligence and Security Services Act of 7 February 2002 (Wiv 2002)⁷² – which provides provision for the co-operation with the MIVD, with law enforcement bodies both at regional and national level⁷³, with the Prosecution Department (national Public Prosecutor for Terrorism)⁷⁴ and other bodies when national security (including the fight against terrorism) is engaged.

Institutional relations exist within the regional police forces (the RIDs) and within the National Police Services Agency (the KLPD/UTBT) under article 60 of the Intelligence and Security Act 2002.

The AIVD is part of almost all co-ordinating groups and working groups dealing with security, counter terrorism (at home and abroad) and safety⁷⁵ including protection of VIP. The AIVD is also tasked with threat assessments and the fight against the financing of terrorism⁷⁶.

⁷² The Wiv 2002 came into effect on 29 May 2002.

⁷³ This also applies for instance to the Royal Netherlands Military Constabulary (Kmar) and in the counter terrorism area the AIVD and the Kmar signed in 2003 a new protocol for better co-operation. It has to be noted that there are Kmar officers who perform activities for the AIVD under article 60 of Wiv 2002.

⁷⁴ "Tracing and prosecuting offences is a task for the police and judicial authorities. Information from the AIVD can, when conveyed to the Public Prosecutor Department by means of an official message, be used for investigative purposes or as evidence in criminal cases" (2002 AIVD annual report).

⁷⁵ This AIVD is for instance involved in the interdepartmental " Vital Infrastructure Protection's project " that should be completed by July 2004, in the project for the protection of the Dutch drinking water supply in 2003, the IAVD also made an assessment for the National Security Committee on Civil Aviation, worked on the implementation of a Certificate of Good Behaviour (VOG) in the security system for civil aviation, etc.

⁷⁶ Cf the involvement of the AIVD in the ministerial Steering Group Terrorism and Security that was created of 16 November 2001 and the protocol that was signed in 2002 by the AIVD and the ministries of Finance, Foreign Affairs, Justice and the financial sector. The protocol stated that "the AIVD investigates whether the holders of funds found in the accounts of the financial institutions are on the freeze list". Cf also the covenant of November 2002 that came into force between the AIVD and Unusual Transactions Reporting Office (MOT) and the contribution of the AIVD to the working group Financing and Combating Terrorism of the Financial Expertise Centre (FEC).

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International co-operation is an important dimension of the fight against terrorism and consequently the AIVD is fully engaged in both bilateral⁷⁷ and multilateral co-operation including au EU level. As the 2003 AIVD annual report states, "the need for international co-operation has prompted a growing number of foreign services to station a representative to the Netherlands for liaising with the AIVD" that has "again expanded its network of relations by adding new contacts to the large number of existing ones" (around 140 connections).

In addition to its membership in the Bern Club, the AIVD is very active in the CTG, which is considered as the best place to co-operate with the EU⁷⁸.

There is also an AIVD officer within the SitCen that is considered as the right room for threat assessment au EU level and as an embryo for co-operation at EU level.

⁷⁷ The Netherlands has a particular partnership with the US in counter terrorism issues. The Kingdom is also working within the NATO structures (such as the special committee of heads of services). As a follow up to the NATO summit in Prague, the relationship between the AIVD and the relevant NATO sections has been identified.

⁷⁸ "The threat assessment on Islamic terrorism, which is drawn up about every three months, has become a regular part of the group's work, and it shows the uniform view of this phenomenon among the European services. In addition, several initiatives were taken to organise meetings for experts from the services in order to exchange information about Islamist terrorist networks and their modus operandi, as well as strategies to counter this phenomenon" (2003 AIVD annual report).

4. The fight against the financing of terrorism

The Netherlands pays extra attention to the financing of terrorism and the policy is based on the concept of integrity of the financial sector and refers to an effective legislation and regulations, exposure of the financial channels and efficient enforcement and implementation⁷⁹. In addition authorities focus on financial sanctions to freeze assets, the prevention of abuse of non profit organisations and houses of worship, denominational and Koran schools: new measures and an ad hoc mechanism are expected in this last area. In fighting the financing of terrorism guidelines are prevention, supervision and administrative action then criminal investigation, prosecution and implementation of sanctions that are imposed.

Broadly said, there is an effective and efficient legislation regarding suspicious transactions and identification of clients for that purpose. The regulations established under the Disclosure of Unusual Transactions (Financial Services) Act play an important part in controlling flows of funds. The obligation to report suspicious transactions applies to a very wide range of financial institutions⁸⁰ including money transfer institutions⁸¹ ...and persons practising liberal professions.

⁷⁹ Cf the memorandum on integrity of the financial sector and the fight against terrorism (Lower House 2001-2002), cf also the "plan of action for combating terrorism and promoting security" of 5 October 2001 (cf chapter 5) and the white paper on "Terrorism and the protection of society".

⁸⁰ Financial institutions are also required by law to maintain records necessary to reconstruct financial transactions for at least five years. The requirements also have been applicable to the Central Bank of the Netherlands since 1998. There are no secrecy laws or fiscal regulations that prohibit Dutch banks from disclosing client and owner information to bank supervisors, law enforcement officials, or tax authorities. Financial institutions and all other institutions under the reporting and identification acts, and their employees, are protected in a specific way by law from criminal or civil liability related to cooperation with law enforcement or bank supervisory authorities.

⁸¹ The Money Transfer and Exchange Offices Act, which was passed in June 2001, requires money transfer offices, as well as exchange offices, to obtain a permit to operate, and subjects them to supervision by the Central Bank. Every money transfer client has to be identified.

The system covering unusual transactions is so wide-ranging that it not only includes money-laundering⁸², but also the financing of terrorism⁸³. This detailed system goes beyond the automatic reporting of any transaction above a certain amount and includes the obligation to report on the client's behaviour, demeanour, attitude and stated wishes. Financial and other institutions that are required to report unusual transactions are also obliged, under the Identification (Financial Services) Act, to identify their clients before providing a service. Failure to comply with the statutory rules is a criminal offence under the Economic Offences Act.

An ad hoc machinery is dedicated to the fight against the financing of terrorism and mainly involves:

- the Securities Board of the Netherlands (AFM (Autoriteit Financiële Markten))
- the Central Bank (De Nederlands Bank or DNB)
- the Pension and Insurance Chamber (Pensioen en Verzekeringskamer or PVK)
- the Fiscal Intelligence and Investigation Service-Economic Monitoring Service (FIOD-ECD)⁸⁴
- the Netherlands Bankers' Association (Nederlandse Vereniging van Banken)
- the Netherlands Association of Insurers (Verbond van Verzekeraars)

⁸² In 1994, the Netherlands criminalized money laundering related to all crimes. In 2001, legislation was enacted making the facilitating, encouraging, or engaging in money laundering a separate criminal offence. In addition to criminal prosecution for money laundering offences, money laundering suspects can also be charged with participation in a criminal organization (Article 140 of the Penal Code), violations of the financial regulatory acts, or non compliance with the obligation to declare unusual transactions according to the economic offences act.

⁸³ In 2002, the "Sanction Provision for the Duty to Report on Terrorism" became effective. Among other points, the decree requires financial institutions to report all transactions that involve persons, groups, and entities that have been linked, either domestically or internationally, with terrorism, to the MOT.

⁸⁴ The FIOD-ECD is responsible for dealers in high value goods and for investigating and prosecuting tax and customs frauds.

and in the area of enforcement :

- the police
- the MOT
- the Public Prosecutions Service
- the AIVD

4.1. The Public Prosecutions Service and the FOM

The Public Prosecutions Service supervises investigations (providing of instructions in investigations related to concrete cases and providing of general instructions on policy) when conducted by the police and other investigative bodies and in particular the Fiscal Intelligence and Investigation Service-Economic Monitoring Service (FIOD-ECD)⁸⁵. As of 1 April 2002 the FOM which is an office of the public prosecution service Prosecutions Service was set up. Headed by a chief Public Prosecutor, it focuses amongst others, on fraud and financing of terrorism. It can act at national level under its own authority.

4.2. The Office for the Disclosure of Unusual Transactions

The Office for the Disclosure of Unusual Transactions (Meldpunt Ongebruikelijke Transacties or MOT) is the Dutch FIU⁸⁶. It is an administrative unit attached to the Ministry of Justice. It directly reports to the Directorate General of Law Enforcement within the Ministry of Justice. The MOT gathers intelligence, processes and analyses all disclosures of unusual transactions under the Wet MOT and determines whether the case is to be considered as a suspect case. If so, the MOT provides information to the Public Prosecutions Service and the police for the use of investigations. The MOT has a central register in which all suspect cases are filed for a maximum of 5 years.

⁸⁵ Following 11 September 2001, the FIOD-ECD and the KLPD decided to set up a task force (including an exchange of liaison officers) to carry out joint investigations.

⁸⁶ The MOT is also a member of the Egmont Group.

4.3. The BLOM

The police and in particular the BLOM⁸⁷, which was created in 1999, is part of the Financial Crime Unit of the KLPD and part of the National Investigation Information Service within the KLPD. It supports the Public Prosecutions Services when suspicious cases are detected. It centralises expertise⁸⁸ and information usually used in money laundering and assists investigations and prosecution at regional level. In order to facilitate the forwarding of suspicious transactions, the MOT and the BLOM created an electronic network called Intranet Suspicious Transactions that was completed by a secure website for the actual reporting of unusual transactions by financial institutions. Furthermore, fully automatic matches of data with the police databases are included with the unusual transaction reports forwarded to the BLOM. Since the money laundering detection system also covers areas outside the financial sector, the system is used for detecting and tracing terrorist financing activity.

4.4. The AIVD

The AIVD is involved in the fight against the financing of terrorism, for instance when dealing with persons and groups whose assets are to be frozen. The AIVD and the MOT signed a covenant in November 2002 that came into force. The AIVD is also working on measures to prevent fundraising activities in compliance with the FEC's and various governmental organisations' recommendations⁸⁹. The Economic and Financial Team of the AIVD represents the AIVD within the FEC. The AIVD also participates in the FEC working group on "Financing and Combating Terrorism" that produced in 2003 a report 3 which provided insight into financial flows of terrorist groups and described the tasks of the FEC members and their access to information on the financing of terrorism3.

⁸⁷ The BLOM, which was created in 1999, is part of the Financial Crime Unit of the KLPD and part of the National Investigation Information Service.

⁸⁸ The BLOM is also a crossroads of information flows on criminal activities and is in contact with the MOT and national and international investigations.

⁸⁹ Cf the paper "Financing and Combating Terrorism" of July 2003.

4.5. The FEC working group on Terrorism and Terrorist Financing

In this area, and in connection with the need to reinforce the integrity of the financial sector, the FEC⁹⁰ working group on Terrorism and Terrorist Finance (FEC werkgroep terrorisme en financiering van terrorisme) was set up⁹¹. It is a permanent administrative body which consists of specialists. It is part of the Ministry of Finance and its working groups are in part chaired by the national Public Prosecutor for the Financial Intelligence Unit⁹². It consists of the Public Prosecutions Department (OM), the Dutch Central Bank (DNB), the MOT, the Authority for the Financial Market (AFM), the Fiscal Intelligence and Investigation Service-Economic Monitoring Service or FIOD-ECD, the KLPD, the Pension and Insurance Supervisory Board (Pensioen- en Verzekeringskamer or PVK), the Inland Revenue (Larges enterprises) section Amsterdam, the Amsterdam/Amstelland Police Force and the AIVD. The tasks of the FEC are as follows: to mutually exchange information, to advance common efforts to gain insight into possible offences and to develop expertise in criminal investigations. Sub working groups have been created on particular subjects such as non profit organisation⁹³ or illegal transfer money systems⁹⁴ and the Central Dutch Bank chairs one of them.

⁹⁰ FEC is the acronym of "Financial Expertise Centre".

⁹¹ Following 11 September 2001, cf the document "Combating Terrorism and Security's action plan " and the document " Financial Sector Integrity and Combating Terrorism's policy".

⁹² The FEC is supported by a supervisory committee that consists of representatives from FEC members and the ministries of Justice and Finance.

⁹³ The Netherlands is chairing a FATF subgroup on transparency and non-profit organisation. Cf also the EUROPOL project on non-profit organisation.

⁹⁴ Such as the Hawalla system and similar that are illegal. Cf the speech by Mr. Gerrit Zalm, Minister of Finance and Vice Prime Minister of the Netherlands at the UN (New York) on 26 april 2004: "(...) there is evidence that charities, front organizations and other pseudo-companies are used to conceal terrorist assets. We should focus on measures to identify these organisations and not hesitate to designate them". The Minister of Finance announced in July 2004 that all registered foundations and possibly all associations will be compelled to disclose their annual accounts. It is also decided that the tax office will have a more active role in monitoring financial resources and activities of foundations. This is the result of investigations conducted by the FEC that revealed in February 2004 that Dutch foundations are an attractive option for criminals and terrorists to finance their activities.

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In order to increase the know-how and expertise on the financing of terrorism and to strengthen the performance of its members, the FEC focuses on methodology related to the fight against the financing of terrorism. For that purpose (including for instance the identification of risk areas...) it studied terrorist groups, centralised information from the AIVD and other sources including open sources and developed a model for analysis on the basis of the definition of the Framework Decision on Terrorism and FATF recommendations. The FEC also uses information from international fora and investigations in order to increase its expertise and consequently its capacity to provide assistance to the prevention and the investigation/prosecution of the financing of terrorism for instance in the area of money transfer, abuse of charity organisations, etc

5. Summary of the evaluation

5.1. Legal provision

In the security and police areas, much has been done in order to upgrade the capacity to fight against terrorism, including the Wiv 2002, the creation of the KLPD/UTBT terrorist database...in addition to other new improvements at cabinet, interministerial and ministerial level (nomination of the co-ordinating minister, of the national co-ordinator for terrorism as well as the creation of the Council for National Security, the GCT, etc).

As a preliminary comment it has to be stated that the evaluation mainly refers de facto to recently and/or newly created bodies including co-ordinating bodies as well as measures whose concrete impact on the fight against terrorism are to be assessed in the long run⁹⁵.

⁹⁵ Concerning the AIVD and its legal basis of 2002, "the Minister of the Interior and Kingdom Relations accepted the proposal of the Second Chamber to examine the AIVD's performance of its duties. He set up an Administrative Evaluation Committee, which will examine the statutory duties, responsibilities, powers and resources of the AIVD and the way in which the AIVD handles these in changing circumstances. The Committee will make recommendations for the future functioning of the service. The Committee's findings could be submitted to the Second Chamber in Autumn 2004" (2003 AIVD annual report). The Minister for the Interior and Kingdom Relations and also on behalf of the Minister of Justice stated that new improvements on the intelligence side of the fight against terrorism are needed. In the future in proposals are adopted, the AIVD could be allowed to gather information on persons who are not themselves suspected of terrorist activities but have links or contacts with suspicious persons. This intelligence gathering could take place on the basis of the use of a new form of intelligence collecting which is called data-mining (automated data analysis that can use various large databases containing personal information and details). In addition, all governmental agencies would be forced to co-operate with the AIVD and to make available appropriate information when requested. A third point is related to the capacity of the AIVD to disrupt terrorist activities in urgent situations. For the time being, in such a case, the AIVD has to refer to the police and cannot act itself. Proposals also plans to give an independent role to the new national monitoring service, the National Signint Organisation (NSO) in order to provide information to the AIVD. The interception of communications by satellite and short wave is still a monopoly of the MIVD. Proposals also refer to substantial additional means that would be provided to the NSO.

5.2. Security and police areas

Due to the decentralised organisation of the Netherlands that has consequences in particular on the organisation of the Dutch police and consequently on the way to deal with the fight against terrorism, improvement of the co-ordination and co-operation is permanently included in governmental guidelines/concerns and in inter agencies agreements. The need to unify and make coherent the fight against terrorism led the authorities to focus on exchange of information in particular and to better bridge the intelligence agencies (mainly the AIVD) and the investigative bodies (the police).

In terms of interaction between the police, the AIVD/RID and the national Public Prosecutor for Terrorism, the fight against terrorism has an intelligence dimension (the AIVD at national level and the RIDs within the regional police forces), a law enforcement dimension (KLPD and regional police forces in terms of criminal investigations and KLPD/UTBT in terms of co-ordination of exchange of criminal information) and a Justice/Prosecution dimension (the national Public Prosecutor for Terrorism). However, this involvement of the security, police and Justice/Prosecution bodies takes place within a political and administrative framework/organisation, which is characteristic for the Netherlands.

The counter terrorism machinery is clearly prevention oriented with a prevalence of the AIVD that is the key player⁹⁶ due to the need to first identify terrorists or persons involved in terrorist activities or supporting activities and to "disrupt"⁹⁷ terrorist activities.

⁹⁶ Or mainly AIVD oriented

⁹⁷ The AIVD cannot disrupt terrorist activities by itself and has to contact the national Public Prosecutor for Terrorism that will pass information to the police for that purpose.

When dealing with intelligence related to terrorist cases to be investigated/prosecuted, the AIVD acts largely on an autonomous basis and its partner is necessarily the national Public Prosecutor for Terrorism.

The national Public Prosecutor for Terrorism has a key role. He/she does not perform investigations by him/herself and more importantly he/she is the unique interface between the AIVD and the law enforcement bodies via the district Public Prosecutor or the national Public Prosecutions office.

5.3. Interaction between the police, the security service and the prosecution

The existence of 25 regional police forces and of a 26th national police agency - and this does not favour a centralised and uniformed co-ordinated approach of the fight against terrorism at national level on the police side – reinforces the prevalence of security aspects. In addition the KLPD is not tasked with the co-ordination of regional police forces but its role is to provide an added value and additional means/resources while respecting the functional autonomy of the regional police forces. It mainly acts as a supporting body in the investigation area and in the field of the exchange of (criminal) information related to investigations (UTBT) under the control and supervision by the national Public Prosecutor for Terrorism. In addition, the KLPD conducts tactical investigations in relation to terrorism. Neither the KLPD nor the Ministry of the Interior and Kingdom Relations affect the functional autonomy and policy of regional police forces, including in the area of information gathering. In this context the fight against terrorism is mainly backed up on AIVD information as such.

The existence of and the statutory connection with the RIDs structurally reinforce this prevalence. In other words, the AIVD controls - of course not in the field of criminal intelligence - the information gathering and the use of information including the contents of the report that is passed to the national Public Prosecutor for Terrorism. This directly contributes to the fundamental importance of the AIVD in the fight against terrorism in addition to the privileged partnership it has with the national Public Prosecutor for Terrorism.

The absence of a centralised police force at national level that would define, implement and steer a uniformed counter terrorism policy/strategy in all regions including criminal investigations is a factor that hampers the fight against terrorism (absence of common standards, of common understanding of terrorism and counter terrorism including common knowledge, transfer of experience). This also applies to information gathering and data processing and exchange of information.

5.4. Intelligence and evidence

Both the Rotterdam trial and the decision of the Court of Appeal of The Hague pose a specific question to the counter terrorism system as a whole on how to better prosecute and trial terrorist cases when there is no evidence (or sufficiently) based on criminal investigations. "What is the admissibility of intelligence as evidence in Court" is a central question that is to be considered for the time being on the basis of the pending decision of the Supreme Court.

However, this question is also to be considered in a wider context including a political dimension. In April 2004, the Cabinet agreed with the Minister of Justice proposals on the use of AIVD information as evidence in Court for the detection and prosecution of terrorists if the Supreme Court decision invalidates the decision of the Court of Appeal of The Hague. "The government is to produce a scheme to improve the use of AIVD and MIVD information in criminal proceedings. (...) The object is to prevent the tasks of the AIVD and the MIVD and the security of sources being compromised by the use of certain information as evidence in criminal proceedings" (Joint letter of 31 March 2004 of the Kingdom Relations to the Chairman of the Lower House).

6. Good practices and recommendations

In general terms, the Netherlands took a wide range of measures in all areas related to the national security of the Kingdom and is permanently upgrading the organisation and the efficiency of the counter terrorism machinery. This includes additional measures and proposals for improving both the intelligence and law enforcement capacity to collect intelligence. The Dutch authorities are fully aware of the need to improve information gathering and exchange of information.

6.1. Good practices

Good practices have been identified as follows:

- 6.1.1. The decisions to appoint the Minister of Justice as co-ordinating Minister and to nominate a national co-ordinator for combating terrorism were taken recently. Undoubtedly this will facilitate a political and technical co-ordination⁹⁸ at national level and will unify more importantly the fight against terrorism internally.
- 6.1.2. An particularly important number of co-ordinating bodies provides assistance to the decision-makers both at political and technical level and this facilitates and favours a common awareness and understanding of terrorist threats/situations and counter terrorism activities.
- 6.1.3. The national Public Prosecutor for Terrorism has a key role due to the monopoly he/she has in dealing with terrorism including international terrorism at national level and due to his/her role of unique contact point with the AIVD.

⁹⁸ It is recalled that the national co-ordinator for combating terrorism chairs the GCT.

- 6.1.4.** Due to the crucial importance of intelligence in the Dutch system in particular, the fight against the terrorism takes benefit from the prevalence of the AIVD in the absence of a strongly centralised national police.

In this context the article 60 of the Wiv 2002 that statutory bridges the regional police forces, the AIVD and the KLPD/UTBT is particularly relevant and efficient. It is a perfect example of best use of existing structures in a decentralised organisation.

The existence of the RIDs within the regional police forces is an excellent practice that ensures an effective and efficient co-operation and co-ordination with the AIVD. This obviously facilitates a common culture of intelligence related to terrorism and overcomes to a large extent the existence of a fragmented organisation of the police at national and regional level on the intelligence side. The expected developments on the use of AIVD reports as evidence in Court will reinforce the role and the importance of the AIVD/RIDs but this will not influence the role of the police (the "information position" of the police as a whole).

- 6.1.5.** Criminal information is largely transferred to the Europol AWF and the national Public Prosecutor favours such transfer even if the case is not over⁹⁹. The Netherlands provides regularly information to Europol and is one of the top contributors to analytical work files on terrorism.

⁹⁹ Information that is transferred to Europol's AWF includes AIVD elements on the basis of an agreement with the AIVD. Information back to the Public Prosecutor is made available by Europol.

6.1.6. The organisation of the fight against the financing of terrorism as a whole can be mentioned as a good practice. This refers to the comprehensive legal basis available (to be extended in the near future) as well as the machinery dedicated as such to the fight against the financing of terrorism. In this specific area, there are other good practices and in particular the FEC. In this domain the involvement of the AIVD, the structural partnership between the MOT and the BLOM (whose activities will be integrated in the near future), the Intranet Suspicious Transactions that was completed by a secure website for the reporting of unusual transactions by financial institutions have also to be mentioned as good practices.

6.2. Recommendations

6.2.1. Exchange of information within the KLPD and among police forces

The Dutch authorities are aware of the need to better involve the police in the fight against the terrorism¹⁰⁰ and to improve co-ordination and co-operation with the AIVD for that purpose. This point is mentioned in the "Plan of action for combating terrorism and promoting security" of 5 October 2001 under point 2 that states that "better interaction between information and security services and police" is needed.

This point is also included in the white paper whose title is "Terrorism and the protection of society": "The police must have a good information position; this is an important link in the fight against terrorism. Certain divisions of each regional police force have a responsibility in the fight against terrorism, and especially, the Regional Intelligence Service (RID). (...) This means that the Dutch police – in particular the National Police Agency – together with the national Public Prosecutor for Terrorism constitutes an important factor in the collaboration between the Public Prosecutions Service and the AIVD".

¹⁰⁰ Including in the field of money laundering and the financing of terrorism.

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Consequently, to expand the role and the capacity of the UTBT is a need. The KLPD/UTBT is tasked with the co-ordination of the exchange of criminal information among police forces. It is also a relevant interface between the police and the AIVD due to the inclusion within the UTBT of persons under article 60 of the Intelligence and Security Act 2002: these persons act as a "AIVD team" since 1 September 2003. From this perspective, the creation of the UTBT including the "AIVD team" is a good practice that overcomes to a certain extent the existing organisational context and is a first right step in the right direction.

However, the UTBT has to face various difficulties with consequences on its role/efficiency.

While co-operation with the AIVD is improving, the problem of unbalanced access to information remains: the AIVD has full access to police files and data via Cluster 4 of the UTBT (in addition to the role of the RIDs in that domain) but gives only limited information to the UTBT. From this point of view, it has to be noted that the heads of the unit and of the team are not under Article 60. They should also act under Article 60.

More importantly, the UTBT has access to the 25 regional police databases but in practice this means that the UTBT has only access to elements that are made available by the regional police forces. As a result the UTBT co-ordination/analysis strictly depend on information (and quality of information) that the regional police forces select and provide themselves. The data that are transferred in practice from the regional police forces to the UTBT are those that the investigator considered as more relevant. In this field, the experts were also told that the regional police forces focus more on information related to drugs than on information related to terrorism. However, there are training courses that aim at sensibiling police officers on the need to collect information on terrorism and on the exchange of information related to terrorism ("culture of thinking each other" and "what to look for", "what to do in order to improve mutual confidence and co-operation", etc).

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In addition each regional police force is free to choose its own computer system. This does not facilitate electronic exchange of information between the UTBT and the regional police forces and among themselves¹⁰¹.

In order to overcome this bottleneck and to facilitate a full access for the UTBT to all files and not only to the selected information, the proposal of experts is first to adopt a national regulation to ensure uniformed and regular /routine information providing by the regional police forces in order to improve the existing situation.

In relation with above mentioned recommendation and without prejudice to the regional police forces, it is so suggested to create only one national police operational database on terrorism that would act as the head and the heart of the network of 25 antiterrorism regional databases. The current work by the UTBT is strictly depending on the regional level and this is obviously a weakness¹⁰². From this perspective, the existing special investigations register (BRZ) is a register as the name implies and not an operational database in terms of intelligence (intelligence as such and criminal intelligence)¹⁰³.

¹⁰¹ In this field and in order to solve problems, cf the ICT Project 2001-2005 and the National Intelligence Co-ordination Project whose aims are to overcome the difficulty of regional police forces working with different basic information systems.

¹⁰² The AIVD overcomes this difficulty with the RIDs.

¹⁰³ Cf the joint letter of 31 March 2004 from the Minister of Justice and of the Interior and Kingdom Relations to the chairman of the Second Chamber : "(...) even more than in the past, the aim must be to find a 'suspicious deviation' by exchanging information across all government departments, linking data files and exchanging and coordinating information. (...). To this end, the exchange of information and cooperation between intelligence and investigative services will be intensified and the synergy between the various data files must be improved. (...) The need to amend the Intelligence and Security Act 2002, particularly on the matter of simplifying the provision for information by third parties to these services is being examined".

This will facilitate the development of appropriate synergies between the police and AIVD working files in order in particular to detect as soon as possible behaviours in relation with terrorist purposes¹⁰⁴.

Exchange of information between the police and the AIVD is currently another bottleneck due to the legitimate need for the AIVD to protect its sources. This leads to an unbalanced situation and the proposal of experts in this field is to provide the UTBT¹⁰⁵ with a better access to the AIVD counter terrorism database: this would rebalance the current situation and would facilitate criminal investigations. In addition, the experts suggest the adoption of police and AIVD databases that are compatible.

- 6.2.2.** The above-mentioned recommendations illustrates the need to define a national counter terrorism strategy at technical (steering guidelines) level for all police forces. According to the experts, this strategy includes common priorities, criteria, quality standards, training programmes with the participation of the KLPD and the AIVD members...in order to develop a common know how/expertise that would apply routinely on an uniformed basis in all regional police forces¹⁰⁶. Currently, each chief of regional police force defines the way to deal with terrorism. On the basis of already existing common training programmes involving both the AIVD and the RIDs, the idea is to have common training programmes involving the regional police forces and the AIVD/RIDs in order to increase mutual understanding (to think each other). These training programmes could fruitfully include the national Public Prosecutor for Terrorism.

¹⁰⁴ This point is mentioned (in a different way) in the joint letter of 31 March 2004 by the Minister of Justice and of the Interior and Kingdom Relations to the Chairman of the Lower House: "(...) the exchange of information and co-operation between intelligence and investigation services will be intensified and the synergy between the various data files must be improved". In order to "keep an eye on the group or persons that have been identified as a risk" it is needed to have "more intensive co-operation between intelligence and investigation services".

¹⁰⁵ This means that the access would be possible for a very limited number of persons.

¹⁰⁶ In addition to the relevant ministers and the AIVD, the Board of Police Commissioners could participate in the definition of guidelines.

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In order to promote a uniform national strategy against terrorism¹⁰⁷, it could be valuable to take advantage of and to assess the current joint monitoring by the AIVD, the police and the national Public Prosecutor for Terrorism of a specific groups of persons that can be connected in any way with terrorist activities or involved in supporting activities¹⁰⁸. For that purpose, exchange of information has been deepened and intensified. The outcome of this particular information exchange process is also jointly assessed. The oversight over this process is the responsibility of the national Public Prosecutor for Terrorism.

In terms of co-operation and co-ordination at national level, the experts are aware that the concept of supra regional organisation of the Dutch police (by the way of co-operative arrangements between the regional police forces) is part of (and at the heart) of the Dutch tradition on policing. However, if we consider that the Islamic extremist activities are a specific threat to the national security and legal order and finally to the society, it is also commonly admitted that terrorism cannot be combated without a common steering line. This one is already existing on the security and prosecution sides: there is a joint co-ordinated approach at national level. At the opposite, the Dutch police is part of this on a limited basis due to the autonomy of the regional police forces.

The proposal of experts in this field is to assess the feasibility and the added value to have a national police counter terrorism task force that would deal only with terrorist cases. This task force, as part of the KLPD, would closely interact with the KLPD/UTBT, the national Prosecutor for Terrorism and district Public Prosecutor, the AIVD and the regional police forces whose role would be to assist its investigators. Such a national counter terrorism task force would undoubtedly reinforced the role of the Dutch police in fighting terrorism as well as the efficiency of the fight against terrorism¹⁰⁹. It would also simplify international co-operation at law enforcement level.

¹⁰⁷ In July 2004, the Minister of Justice declared (NRC newspaper) that in the terrorism area, a possibility to be more efficient could be the merger of the prosecution and police authorities. He also said that far-reaching European co-operation opens up the necessity for a more centralised body for the police and prosecution department.

¹⁰⁸ The group has been identified by the AIVD.
For instance, it was stated in December 2002 that in the field of recruitment a wide-ranging approach, involving an early identification of recruitment activities is needed, based on the involvement of the Islamic community itself (parents, imams and mosques) at the earliest possible stage, while the authorities should focus on investigation and prosecution and on enforcing the integration policy.

- 6.2.3.** In the light of the Rotterdam trial and of the decision of the Court of Appeal of The Hague, the government intends to reinforce the admissibility of AIVD information in Court. This will undoubtedly facilitate the prosecution of terrorist acts. An alternative solution is to confer a law enforcement competence to the AIVD in the counter terrorism area regarding Islamic terrorism and only in this area¹¹⁰. This could also apply to the RIDs when they act under article 60 of the Wiv 2002 under the guidance/control of the AIVD. A law enforcement competence will facilitate under the supervision and control of the national Public Prosecutor for Terrorism, the disruption of terrorist activities at early stage when needed on the basis of criminal investigations whose results could be immediately used as evidence in Court. The organisation and law enforcement competence of the French DST could inspired this reform.
- 6.2.4.** The Netherlands already has emergency plans related to the management of major crisis including a national co-ordination centre but has no antiterrorist plan as such¹¹¹. Protection against terrorist attacks obviously includes vital infrastructures and other similar potential targets. However and as demonstrated for instance in Madrid "soft targets" must be also included in a national antiterrorist plan as well as a general national warning system that could be similar to the one which exists in France (plan Vigipirate). This mechanism would apply to all crisis situations and would be particularly relevant in the Netherlands due to the fragmentation of responsibilities between the governmental authorities, the local authorities in addition to the various bodies and other entities that are involved in major crisis.

¹¹⁰ The experts are aware of the existence of the current strict distinction between the police and security activities.

¹¹¹ "A policy plan to this effect that aims to modernise and strengthen the public system of crisis management is currently being prepared, and will be adopted by the Council of Ministers before the summer" (joint letter of 31 March 2004 by the Minister of Justice and of the Interior and Kingdom Relations to the Chairman of the Lower House). This plan will be based on the existing methodology and structures related to crisis management plan and will include "the introduction of the 'five-party' consultation in which the fire brigade and the GHOR (Medical Assistance at Accidents and Disaster) form part of the consultative platform" in addition to "the regular tripartite consultation".

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This national antiterrorist plan could also deal with consequence management in addition to the definition of risk levels and consecutive related safety measures. If a large-scale terrorist attacks occurs, the human and technical resources that will be needed will largely exceed the resources available in only one municipality¹¹². In that field, the experts fully support the ongoing discussions aiming at defining a national warning system¹¹³.

- 6.2.5.** Threat assessments are made by the AIVD. The proposal of experts in this field is to include law enforcement input in the future and in particular police input.

¹¹² Cf also the implementation of the clause of solidarity.

¹¹³ "The purpose of this system (to be developed in the very near future for anti-terrorism purposes) is to make clear to government institutions, business sectors and individuals – depending on the level of alert announced – what state of alert is required". This will specify security and safety measures to be implemented and "will be in line with similar system as used by NATO, France and the United Kingdom".