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## THE NATIONAL PROSECUTOR'S OFFICE

The National Prosecutor's Office is constantly working towards a top priority of the Public Prosecution Service: tackling (international) organised crime. For criminal networks, the National Prosecutor's Office represents and unavoidable risk of detection and criminal prosecution.

The service willingly **confronts** transnational criminal organisations, that otherwise appear untouchable.

The core task of the Public Prosecution Service is the enforcement of law and order through criminal law.

The **mission** of the National Prosecutor's Office is directly derived from that task:

*"The National Prosecutor's Office tackles (international) organised crime by means of effective intervention in criminal law".*

Although the National Prosecutor's Office focuses on tackling organised crime, this is not an exclusive domain. Within the structure of the Public Prosecution Service, the National Prosecutor's Office is positioned as a first-line organisation alongside the 19 district Public Prosecutor's Offices and the Functional Prosecutor's Office. The responsibility for tackling organised crime is shared. (Supra)regional criminal investigation services, the Royal Netherlands Military Police and the special investigation services also have an important role to play. One particular characteristic of the National Prosecutor's Office, however, is that it has an 'international agenda'; in principle, no form of (trans)national organised crime whatsoever is beyond the scope of the National Prosecutor's Office and the National Criminal Investigation Service.

The National Criminal Investigation Service is the most visible partner of the National Prosecutor's Office. Our Public Prosecutors are in direct charge of the criminal investigations by the National Criminal Investigation Service, part of the National Police Agency (KLPD). In addition, the National Prosecutor's Office works closely together with many partners on a national, European and global scale. This international cooperation is for example reflected in the close relation with Eurojust, a European body whose objective is to strengthen cooperation on matters of justice within the European Union.

The Board of Procurators General also has tasked the National Prosecutor's Office with the development of expertise in special investigation powers and ICT criminality.

Furthermore, the National Prosecutor's Office often participates in the criminal law activities of other public prosecution offices in the form of prosecution-related services in the fields of infiltration and witness protection, coordination of the deployment of the Central Criminal Intelligence Division. The National Prosecutor's Office is also the link between the Public Prosecution Service and the intelligence and security services.

On the basis of the Police Act, the Chief Public Prosecutor of the National Prosecutor's Office is granted authority over the National Police Agency. The Minister of Interior Affairs and Kingdom Relations bears the responsibility, as police force manager, for the KLPD. On the basis of articles 38c and 41 of the Police Act 1993, the draft policy plan and the annual report of the KLPD are drawn up in consultation with the Chief Public Prosecutor of the National Prosecutor's Office of the Public Prosecution Service. In the tripartite discussions between the mandated police force manager, the Chief Public Prosecutor of the National Prosecutor's Office and the Chief Commissioner of the KLPD, decisions are taken on the implementation of the policy plan. The National Prosecutor's Office and the KLPD may therefore be viewed as partners in the same field of operation.

In 2006, the National Prosecutor's Office employs some 150 employees (public prosecutors, junior clerks, policy workers and (legal) administrative employees) actively involved in criminal proceedings and policy. The organisation is structured in three result-oriented teams (National Criminal Investigation Team, International Tasks and Expertise Team and Information and Operational Coordination Team), as well as a policy office and a staff office, who advise and support the management. The National Prosecutor's Office is constantly striving to improve its performance. Appreciation by the 'clients' of the Office is crucial to success. The National Prosecutor's Office aims to offer outstanding performance, and be counted amongst the best. Partly against this background, both inside and outside the courts, the Office has opted to ensure maximum transparency and visibility.



## ORGANISED CRIME

### IT'S ABOUT MAKING MONEY

Fortunately, the 'ordinary' man and woman on the street in the Netherlands experience little or no trouble from organised crime. It is a more or less invisible form of criminality. There are occasionally identifiable victims, for example children abused for pornography or individuals forced into the trade in human beings. Often, however, for example in the drugs trade, the victims are far less clear. In that situation, organised crime represents an attack on collective interests, in other words the interests of society as a whole.

Organised crime may be viewed as the shadow side to social life. The seriousness of 'trade crime' above all lies in the massive illegal profit amounting to hundreds of millions of euro and the resultant economic power. It's about making money. Because of the huge financial interests in what is for the most part an unregulated world, the risk of violent escalation is an ever present threat. The most extreme response to problems take the form of liquidations. Then there are the successful attempts to correct government.

There is not *one form* of organised crime. Evidence has never been found in the Netherlands for an all-encompassing, very large-scale criminal organisation like the 'traditional' Italian mafia. There is no Dutch 'capo di tutti capi' in the underworld, nor even the world of legitimate business.

Pyramid-shaped organisations with a strict hierarchy, clear distribution of tasks, a code of conduct and an internal system of sanctions are the more the exception than the rule. Continuing academic research has created a more nuanced picture of organised crime. It is not unusual for criminal groupings to be part of networks, in which various groups are loosely connected.

#### TEMPLATE

The traditional template is that a perfect division can be identified between well-behaved citizens, business and institutions, and their criminal counterparts. According to this template, criminals can be divided into clearly demarcated groups for example 'human traffickers' and 'drugs dealers'. Unfortunately, the world is not that simple.

There are often clear links between legal and illegal activities; apparently honest businesses cross the boundaries of what is permitted (bookkeeping scandals), legitimate businesses help

organised crime groups to operate effectively (by providing the legal and financial conditions they require) and vice versa: structures from the 'underworld' help legal businesses (waste dumping, the illegal supply of information about persons/companies) and ordinary citizens are consumers of illegal goods and services.

It has also been shown that organised crime is sometimes truly specialised, with groups focusing on a single form of criminality (for example swindles by gangs from West Africa). However, there is often evidence of a broader interest, whereby the criminal groups grasp opportunities wherever they emerge. Evidence has often been provided of shifts and overlaps in the areas of criminal activity; for example drugs dealers often also traffic in human beings, cigarettes or the arms trade.

#### GOODS FLOWS AND MONEY FLOWS

The vast majority of organised crime in the Netherlands involves the transnational trading in drugs. There are, however, other extremely profitable forms of crime including fraud, human smuggling, human trafficking, child pornography and the trade in (chemical) waste. Organised crime is as it were hitching a ride on the existing goods flows and money flows in the Netherlands. Specifically because of its location and infrastructure, the Netherlands is an attractive country for both legal and illegal trade.

In terms of illegal trade, the Netherlands is not only a destination country, but also a transit country, and for XTC a production country. It would be irresponsible to provide solid figures on the scale of organised crime. The picture is too differentiated to permit sound statements on turnover or numbers of criminal organisations.

It is impossible to entirely eradicate organised crime. In tackling the problems, efforts are focused on restricting the illegal markets for goods and services. We must prevent the foundations of society from being totally undermined. For the National Prosecutor's Office nobody may be considered untouchable. The most fruitful approach combines the flexibility of a subtle 'short sharp shock' through to a general strategy for fully eradicating a criminal organisation on the basis of long-running investigations.



# TERRORISM

## DILEMMA OF PREVENTION AND EVIDENCE

The suicide attacks in the United States, Madrid and London demonstrated the fact that these suicide bombers are acting with thoughts of eternity. The murderer of film maker Theo van Gogh was also willing to lay down his life, for his crime.

Since the attacks on 11 September 2001, criminal law has been focused on terrorism. A change to the Dutch Criminal Code has made 'participation in a terrorist organisation' a crime subject to stiff penalties. In addition, the maximum sentence for a number of other crimes has been raised, if committed with a terrorist objective. Prison sentences of between fifteen and twenty years are in keeping with the extreme nature of crimes committed by terrorist organisations. The seriousness of the crimes gives grounds for tough and sometimes even the toughest penalties within our legal system. This fact expresses the nationally and internationally-held belief that terrorist attacks are amongst the most serious crimes possible.

These changes are only of secondary importance in the prevention and combating of terrorism. There is an obvious explanation for this fact. It is unlikely that the potential terrorists will allow themselves to be dissuaded by the threat of a higher sentence. There is little likelihood that outside pressure will prevent such attacks. The most striking example is the suicide attack.

More than with other forms of criminality, combating terrorism is reliant on prevention. Counter-terrorism is above all the task of the intelligence and security services such as the General Intelligence and Security Service (AIVD). On a national scale, to improve the combating of terrorism, a cooperate venture between the AIVD, the National Police Agency, the Public Prosecution Service and the Immigration and Naturalisation Service has been established, the so-called 'CT-Info Box' (counter-terrorism information box). To structurally raise cooperation right across the board in countering terrorism – some twenty organisations are involved – to a higher plane, coordination has been entrusted to the National Coordinator for Counter Terrorism (NCTB).

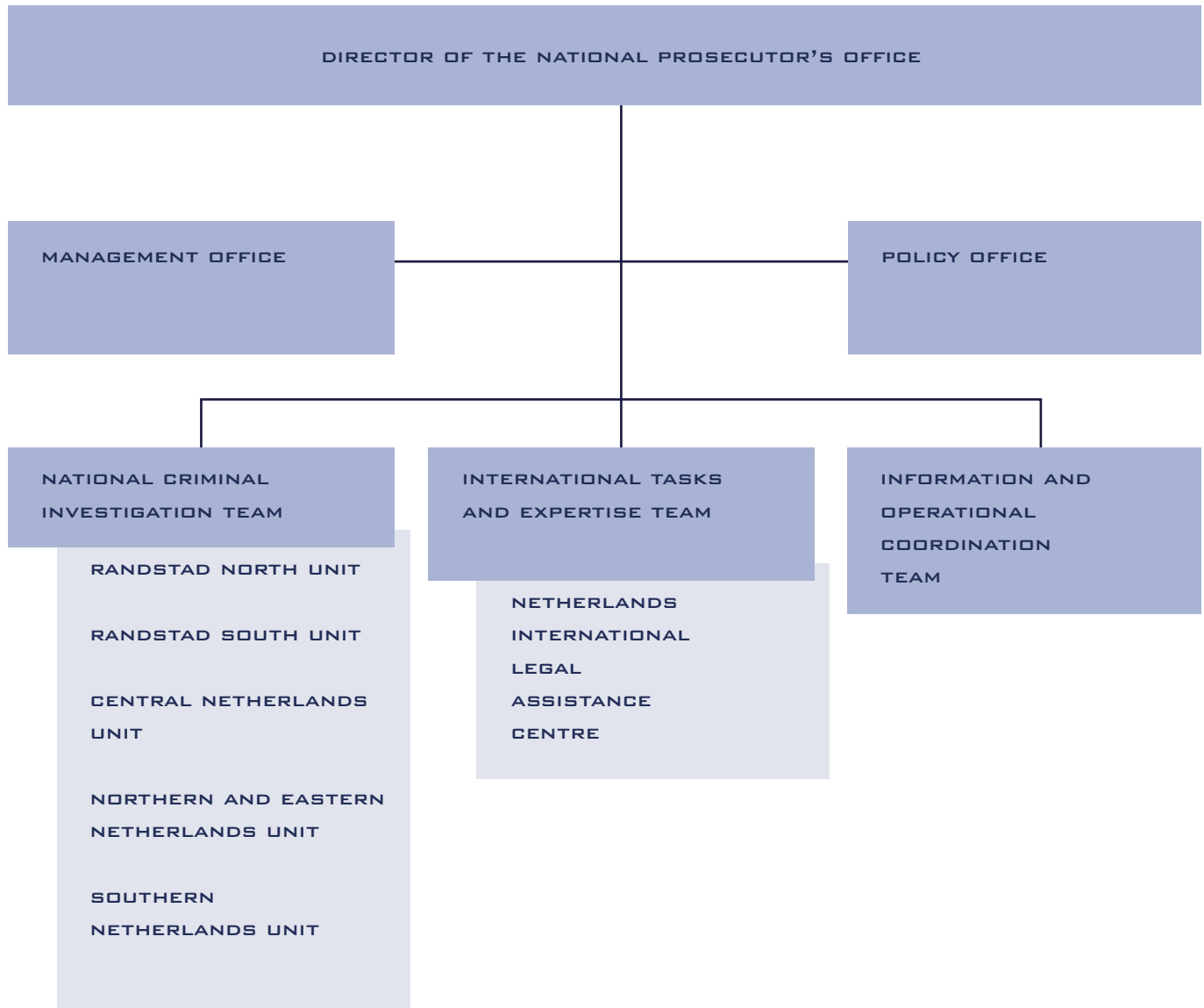
Whenever there is a reasonable suspicion of guilt of an offence, the information from a mixture of human and technical sources will be criminally prosecuted. Such a suspicion can result in the arrest and pre-trial detention of suspects. Nonetheless, for

a successful prosecution, evidence is required which can be checked by the courts for legality and reliability. Because of the protection of sources and methods used, information from the intelligence and security services cannot always be thoroughly explained in the criminal proceedings. This may result in the acquittal of suspects believed to have been involved in the preparation of terrorist attacks. It is however possible that the intervention by the criminal justice system may have prevented possible attacks.

Such acquittals may be unavoidable. If the National Prosecutor's Office is faced with the dilemma of initiating criminal proceedings to *prevent* an attack or first collecting (more) evidence with the risk that an attack will take place – of course taking account of the rules of law – the decision will be taken, without hesitation, to arrest the suspects. Any delay in such a situation would be irresponsible. It goes without saying that preventing an attack far outweighs obtaining a criminal conviction. It should also be noted that the possibilities for making use of information from the AIVD in the criminal proceedings are being broadened.



# THE ORGANISATION



# NATIONAL CRIMINAL INVESTIGATION TEAM

## SIX SPEARHEADS

Criminal investigation and prosecution are the grounds for the existence of the National Prosecutor's Office. This first-line character is best reflected in the National Criminal Investigation Team. In often large-scale investigations, public prosecutors, junior clerks and administrative staff are heavily dependent upon one another. On a permanent basis, more than 100 criminal investigations by the National Criminal Investigation Service are permanently managed. For these mega cases, evidence is presented in hearings, and the demand for the imposition of sentencing is put to the court.

The Ministers of Justice and Interior Affairs and Kingdom Relations have identified six spearheads in tackling organised crime:

- Terrorism and other extreme forms of ideologically-motivated crime;
- The trade in cocaine and heroin;
- The production of and trade in synthetic drugs;
- Human trafficking and human smuggling
- The trade in and use of firearms and explosives and
- Money laundering

The ever-present and general threat of terrorism calls for particular and intensive attention, including the tackling of terrorist groups in criminal proceedings. The approach to hard drugs, including synthetic drugs, also demands continued priority because of its serious national and international consequences (public health, corruption, recruitment criminality, economic damage and a negative international image).

On the basis of (sexual) exploitation and suppression, human trafficking represents a serious violation of human integrity. In most cases, this form of criminality involves women of non-Dutch origin who are brought to the Netherlands by means of smuggling. Both human trafficking and smuggling must be seriously tackled. The National Threat Assessment also describes arms smuggling as a threat to Dutch society over the coming years. The violent impact of firearms on society, further strengthened by the possible ties between the trade in firearms and explosives and terrorism, is the reason for focusing additional attention on this aspect.

The driving force behind organised crime, in most cases, is financial gain. The National Threat Assessment demonstrates that the laundering of money is an inextricable component of the recruitment process in both the underworld and in legal business, and represents a threat to the integrity of the legal economy. Money laundering has therefore also been identified as a priority, by the Ministers.

At the suggestion of the Public Prosecution Service, the authorities have determined that the National Criminal Investigation Service should – in principle – focus on all forms of (trans)national organised crime, the handling of complicated requests for mutual legal assistance, the provision of capacity for international cooperative ventures, and the fulfilment of a national expertise function, in the areas of attention. In practice, by establishing an information position, the National Criminal Investigation Service will also undertake more investigations into these six fields, and make the information obtained available so they can be tackled by other components of the criminal investigation organisation.

## WAR CRIMES

As well as the areas of focus already determined, the National Criminal Investigation Service continues to focus attention on war crimes. War crimes, genocide and torture are also high on the international political agenda. The investigation of war crimes is viewed both nationally and internationally as a question of particular importance. It is not so much a question of the interests of the Netherlands as an individual state, but more the interests of the international rule of law, as a whole. A wait-and-see attitude by the Netherlands in the investigation and prosecution of war criminals would be unacceptable. The government wishes to issue a signal, both nationally and internationally, that the Netherlands is not a place of refuge for torturers and war criminals.



## INTERNATIONAL TASKS AND EXPERTISE TEAM

### RESPECT, RELIABILITY AND CLARITY

In international legal cooperation, the National Prosecutor's Office is a hub of information flows. The Office offers legal support in fulfilling requests for mutual legal assistance. Via the Netherlands International Legal Assistance Centre (LIRC), a cooperative venture between the National Prosecutor's Office and the International Network Service (DIN) of the National Police Agency (KLPD), information is exchanged direct from Zoetermeer with authorities abroad.

Mutual legal assistance travels via a range of channels, for example Interpol, Europol, the Schengen Information System (SIS), foreign liaison officers in the Netherlands and vice versa Dutch liaison officers abroad who submit requests for information and evidence in criminal investigations. The exchange of information is subject to the responsibility of the Public Prosecution Service, the same body that provides permission for the use of investigative powers, for example telephone tapping, observation and searches.

In the fight against organised crime, the Member States of the European Union work together in several fora, including the European Justice Network (EJN). The network supports operational judicial cooperation with the EU. Each Member State has appointed one or more contact points, whose task is to assist in the provision of mutual legal assistance. The EJN helps to ensure that the shortest possible route between the competent bodies in the countries in question is identified.

The judicial network helps to identify the correct contact point for a request for mutual legal assistance, and mediates in solving bottlenecks, delays and conflicts which arise in the implementation of requests for such assistance. Another important task of the network is to issue advice on the best way to cooperate in complex criminal cases, between EU Member States. Respect and trust are essential in international cooperation. International legal cooperation is a time-consuming business and often a 'trial of patience' which may last longer than many would wish.

#### EUROJUST

In 2002, European cooperation took on more solid form with the establishment of Eurojust. This unit is aimed at simplifying

investigation and prosecution in cases of international organised crime. Eurojust itself does not prosecute the case, but outsources this task to the competent authorities in the various countries. As a result, the risk of transnational crime going unpunished or unnecessary duplications occurring is avoided. Investigations can also be carried out by Joint Investigation Teams (JITs), with detectives from various countries of the European Union.

#### CLARITY

In investigation work, the Public Prosecution Service and the police have an obvious need for clarity, for example on criteria for bugging criminals or the use of 'undercover' authorities such as police infiltration. In the legal landscape of investigation and criminal prosecution, police and the Public Prosecution Service work exclusively in accordance with the authorities laid down in the law. The principles underlying that codification are public accountability and monitorability of the investigation methods. The Special Investigative Powers Act (BOB) was introduced on 1 February 2000. This Act lays down far-reaching powers of investigation such as observation, infiltration, direct bugging and the tapping of telephone conversations. Such authorities represent a serious violation of the basic human rights of individuals, in particular the right to privacy.

Operators from 'the field' can at all times contact the National Prosecutor's Office with questions on the application of the BOB Act. Frequently asked questions relate to telecommunication, observation and international mutual legal assistance.

The ultimate answer on the use of special authorities comes from the Supreme Court. In appeals to the Supreme Court, answers are provided on the legality of the use of special authorities.

This jurisprudence, for example in the form of supplements to the Investigators Manual – a publication to which the National Prosecutor's Office is a contributor – finds its way to the Public Prosecution Service and the police.

The National Prosecutor's Office is also the home base of the Central Assessment Committee (CTC). The CTC advises the Board of Procurators General on the use of special powers of investigation such as infiltration and the 'direct bugging' of homes.



# INFORMATION AND OPERATIONAL COORDINATION TEAM

## SERVICE PROVISION

The intelligence and national coordination portfolios of the National Prosecutor's Office are placed within the Information and Operational Coordination Team. The National Prosecutor's Office is often a link in the criminal law chain for other public prosecutor's offices. The Information and Operational Coordination Team provides prosecution services in the fields of infiltration and witness protection, telecommunication, tackling corruption, the coordination of the deployment of the Central Criminal Investigation Division and the war on terrorism.

Two public prosecutors are specially appointed by the Public Prosecution Service to maintain contact with the intelligence and security services AIVD and MIVD. Although these services have no task in respect of investigating criminal activities, they may come across criminal behaviour. Information which is relevant to the investigation and prosecution is then issued to the national public prosecutors, in the form of an official country report. They can pass on this information to their responsible colleague within the Public Prosecution Service.

The daily contact point for the National Criminal Investigation Division – traditionally an investigative body with a special task – is the coordinating public prosecutor for national criminal investigation cases. The National Criminal Investigation Division operates above all in the field of criminal activity which actually affect the integrity of the dispensation of justice and the integrity of public administration.

Deployment in these activities is determined at a central location by the so-called coordinating committee of the National Criminal Investigation Division (CCR). The CCR consists of the portfolio holder for the Criminal Investigation Division within the Board of Procurators General, the Chief Public Prosecutor of the National Office and the Director of the National Criminal Investigation Division. The CCR is assisted by the coordinating public prosecutor for national criminal investigation cases.

Because of the far-reaching consequences of witness protection, this responsibility lies entirely with the Board of Procurators General. This relates specifically to the liability of the Kingdom of the Netherlands for the health and safety of the protected witness.

The public prosecutor at the National Prosecutor's Office advises the Board on the necessity of witness protection. The protection programme sometimes generates excessively high expectations, but it is not the world of Peter Stuyvesant in the Caribbean or the Canary Islands. It is not a luxury programme with all expenses paid by the State. A normal 'low profile' lifestyle with paid employment and an ordinary house are the least conspicuous. Witness protection means a complete break from the existing social environment. In the most extreme cases, it may mean life with a temporary new identity or at least pseudo-identity.

The Information and Operational Coordination Team is closely involved in the information coordination, distribution and assessment by the International Police Services (DNRI) of the KLPD. The knowledge acquired by the DNRI is shared with the regional police forces, and other investigative bodies. The DNRI is also responsible for drawing up the National Threat Assessment for organised crime.

Since 1 January 2006, the National Prosecutor's Office has also been responsible for the tracing of persons detained under a hospital order who are absent without leave, and minors on the run, sentenced to detention in a youth custody centre. The National Prosecutor's Office makes available a central investigation team, within the KLPD. On average in any year, there are 90 cases of absenteeism amongst those detained under a hospital order, from an average of 50,000 permitted movements.

The National Coordination of Mega Cases (LCM), based at the Court of Rotterdam, is responsible for the inventory of mega cases, and the allocation of each mega case to a court where there is capacity for a mega hearing, on the basis of specific criteria. The coordination of the Public Prosecution Service by the National Office delivers up-to-date information to the LCM, and advises the LCM on the process of allocation to a court.

