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# **First inventory of policy on counterterrorism:**

**Germany, France, Italy, Spain, the  
United Kingdom and the United States  
- 'research in progress'**

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**Associated working documents (can be downloaded from [www.wodc.nl](http://www.wodc.nl))**

*Working document 1*

Albrecht, H.J.

Country report on Germany

*Working document 2*

Bigo, D. and Camus, C.

Overview of the French anti-terrorism strategy

*Working document 3*

Montauti, M. and Vettori, B.

Italian contribution to the NCTB counterterrorism project

*Working document 4*

Gómez-Céspedes, A. and Cerezo Dominguez, A.I.

NCTB counterterrorism strategies in Spain

*Working document 5*

Petrosino, A.

The United States and Counterterrorism: History, measures and lessons

*Working document 6*

Aksu, M., Buruma, Y. en Kempen, P.H.P.H.M.C.

Strafrechtelijke antiterrorismemaatregelen in Nederland, het Verenigd Koninkrijk, Spanje, Duitsland, Frankrijk en Italië (in English mostly)

*Working document 7*

Vervoorn, L. en Neve, R.J.M.

Contraterrorismewetgeving, een overzicht van negentien EU lidstaten (in Dutch only)



## Summary

This report presents a first inventory of measures aimed at combating radicalisation, extremism and terrorism (referred to in this report as counterterrorism policy) in Germany, France, Italy, Spain, the United Kingdom and the United States. Commissioned by the NCTb, the WODC (the Research and Documentation Centre of the Dutch Ministry of Justice) carried out a study into counterterrorism measures in place in the countries investigated in early 2006. This study comprises the first international inventory of a number of policy fields under development, whereby the counterterrorism policies discussed here are characterised by extremely rapid development and innovation. This inventory can serve as point of departure for the registration of policy developments and to obtain an insight into their effectiveness. The continuous monitoring of the developments is therefore recommended.

Researchers in Germany, France, Italy, Spain and the United States have drawn up working documents, each with an inventory of the policy in place in that particular country, taking their information from public sources, mostly government publications and Websites, as well as articles, reports and books. Data on the United Kingdom were collected by the WODC. The closing date for the data collection was 1 February 2006.

Besides the inventory, the researchers were invited:

- to present a brief history of the development of the counterterrorism policy in the country in question, focusing on experiences with past terrorism and how it was combated
- to devote attention where possible to (policy) assumptions on which more recent measures are based
- to present available evaluations.

Due to the study's character of providing an inventory, differences may occur between the countries as regards topic detailing. This is "*work in progress*" involving a policy field *in progress*. There is no systematic comparison between the countries. It is not possible, therefore, to draw conclusions based on this report for the introduction of certain measures in the Netherlands. However, following a summary of the key study results, seven strategic issues were identified as they emerged from the material.

### **Key points from the policy fields investigated**

#### *1 Prevention of radicalisation and recruitment*

All countries investigated in the study recognise the phenomenon of radicalisation of young Muslims in particular (and the role the Internet plays in this). Some reports focus on the more general interpretation of the problem. Besides the Netherlands, the United Kingdom in particular seems to be devoting a great deal of policy attention to radicalisation. A somewhat detailed concept in the United Kingdom distinguishes between structural, motivational and environmental factors. The various government services involved in the United Kingdom try to

take into consideration the impact any measure may have on relationships with the Muslim community.

The actual point of interference in the process in the countries investigated in the study also distinguishes the countries' approach to radicalisation. Some European countries, such as the United Kingdom and the Netherlands, clearly aim to prevent radicalisation, focusing on early interference in the process. According to the working document, the United States opts for a broad interpretation of its freedom of speech, focusing on preventing *recruitment* for terrorist acts. The United States and the United Kingdom have also developed an international approach to radicalisation, based on the assumption that improving poor living circumstances and solving local conflicts may help reduce the breeding ground for extremism.

## 2 *Information to the general public*

There are major differences between the countries as regards their information to the general public on the counterterrorism policy in place and their attempts to involve the public. Together with the United Kingdom, the Netherlands appears to have the most far-reaching information policy: besides a leaflet that was distributed door-to-door, a special Website was set up. An alerting system was set up in some countries. A dilemma in the information policy is that while extensive information may promote support from the population, it may also help the terrorists themselves. Experiences gained with provision of information in the various sectors, and the development of theories in relation to this, could be used to improve the effectiveness of the campaigns.

## 3 *Institutional developments*

In most countries, save for the United Kingdom, special bodies have been set up to coordinate the fight against terrorism. These new bodies may include cooperation between investigation and intelligence service, or other organisations, such as ministries. These organisations often accommodate people from a range of ministries and services, and developments regarding the organisation of these new bodies are often still in full swing. Some studies which have already been published regarding the Department of Homeland Security in the United States suggest that on the conceptual and organisational levels many problems still need to be solved.

## 4 *Intelligence*

In order to gain insight in terrorist activity, governments use a combination of strategies. The working documents refer to *human intelligence*, low level intelligence and the use of (linking) personal data by means of data mining. The use of databases of personal data combined from a range of sources is emphasized in Germany (Rasterfahndung) and the United States, even if it is applied everywhere else, including the obligatory storage of telephone records for further analysis and investigation. Privacy is also an issue in all countries as regards topics such as data retention and dragnet investigations. Under a new Act of 2006, France, too, seems to favour a shift to databases, away from its traditional strong focus on *human intelligence*. It seems to suggest a certain *technologicalisation* of intelligence work. The exchange of information between national authorities within the countries themselves, between countries, and at the international level, continues to be a point for attention.

### 5 *Protection of the critical infrastructure*

While this issue was not extensively dealt with in all working documents, it seems that all national governments have developed regulations and set up schemes to protect their critical infrastructure in case of a threat or actual terrorist attack. Cooperation with companies that are part of the critical infrastructure has been initiated in some countries.

### 6 *Legislation and regulations*

In international legislation a considerable level of agreement between the various countries has been reached, thanks to, amongst other things, the European framework decision. Differences between the countries continue to exist, however. For example, the United Kingdom has voiced reservations in respect of article 5 of the European Treaty in Human Rights introducing the 'derogating control orders' (see par. 3.12).

Endeavours against terrorism are being furthered through legislation and regulation, and in this connection the report focuses on measures with respect to the financing of terrorism, measures under aliens law, new penalisation measures and criminal proceedings measures. The use of *Information from intelligence services in the criminal process* was only implemented into UK regulations, but has not yet been put to practical use.

Certain national laws provide for the detention of terrorist suspects for longer periods of time without a formal charge, and the limitation of contact with lawyers or relatives ('incommunicado'). National laws are often difficult to compare as the pre-trial or preventive detention must be regarded in the light of the legal tradition of the country in question. Also, some countries allow a restriction to be placed on the lawyers' (complete) access to the police file for the trial.

Certain national laws provide for restrictions with regard to (self)employment for individuals who are convicted for terrorist crimes.

### 7 *Implementation and evaluation*

It is expected that in the coming years most countries will have reports on the degree in which the measures taken meet their targets (and at which costs). For now, little has been found on the measures taken after September 2001. Some authors of the working documents call for the inclusion in the evaluation study of the question whether or not the measures developed by policymakers have actually been implemented.

It is clear that many of the policies in place in the countries investigated were implemented recently, with the working documents frequently referring to *emergency measures*. These left little time for *evidence-based policy making* or the detailing of the assumptions behind the various measures. Researchers can play a key role in this by tracing and systematising policy assumptions. By using syntheses of existing studies, aimed at mechanisms assumed to play a role in counterterrorism policies, these assumptions can be clarified and checked. This scope extends far beyond an analysis of only those investigations carried out as 'evaluations of counterterrorism policy'.

## Strategic issues

This report is an inventory of counterterrorism policies — in a broad sense - in place in Germany, France, Italy, Spain, the United Kingdom and the United States. What are the strategic policy issues that have emerged from the study?

### *1 Learning from previous experiences?*

While the analysis of ‘old terrorism’ in the light of the most recent developments seems to have only just begun, it could prove very worthwhile (see chapter 2). The history of the rise and fall of terrorist movements may offer leads for today’s government policies. What are the conditions for negotiating with terrorists or their ‘political’ wings (Spain, Northern Ireland)? When could amnesty schemes apply (France)? What can be learnt from the approach to RAF sympathisers in the nineteen seventies in deciding how to approach radicalising young Muslims today (Germany)? According to Wilkinson the IRA was inspired by the successful terrorist movements from the period of the decolonisation. The Netherlands was confronted by Malaccan actions in the nineteen seventies. What are the parallels with today’s situation?

### *2 Mostly repression, or also emphasis on prevention of radicalisation?*

The overview of counterterrorism policy presented in this report yields a number of different ‘policy styles’, which may in part be dictated by previous experiences with terrorism and the (administrative) traditions in a particular country in general. All countries have introduced repressive measures through new penalisation systems and an extension of the investigation tools. A strategic question is how effective is it — in comparison — to concentrate on a broader policy which aims at stopping people from radicalising and joining extremist groups. In the United Kingdom in particular, prevention of radicalisation is a serious issue, in this case aimed particularly at improving relationships between the government and *minority communities*. As in the Netherlands, government memorandums on the subject of radicalisation have been published in the UK.

### *3 How to solve tensions between population groups?*

Increasing polarisation can lead to radicalisation. Tensions between Muslims and persons of native origin increased after 9/11 in particular. The perception of the existence of groups strongly opposed to each other is not unusual. Extreme rightwing ideas amongst youngsters have been surfacing in some places. In the ‘Islam debate’ some look for confrontation, with the Islam as codified religion (Quran, hadith, etc.) being pinpointed as the source — and therefore the cause - of *jihadi* terrorism. Governments opting for a cautious approach (as was the case in the Danish Cartoons affair) are sometimes accused of ‘appeasement’, reinforcing the ‘enemy’ by shying away from confrontation. Governments must find a balance in preventing tension between and within population groups.

The presence of large Muslim minorities forces governments to develop a policy on the attitude to take vis-à-vis Islam. This is a sensitive topic in the countries investigated. France is taking government action to promote a moderate Islam. The United Kingdom seems to restrict itself to combating the most radical elements. *Community impact assessments* are used to try and obtain an insight into the response the policy evokes in ethnic communities. The question is whether this

should apply solely to the minority groups, or also (for example) to groups of potential supporters of extreme rightwing ideas.

#### 4 *How to keep extremist elements out or how to deport them?*

All countries use their aliens policies in their fight against terrorism. Differences in nuance relate to differences in the degree to which extremism *imported* from abroad (GIA, PKK) and extremism *developed* amongst immigrants has surfaced in the past and present. A further analysis of these types of radicalisation and extremism is called for, one that goes beyond considerations taken solely within the context of the aliens policy. For example, the working document on France reports that while GIA terrorism is a form of 'Islamic' terrorism, it can only be interpreted in the light of the complex and decades-long relationship between France and Algeria. Obviously, there is also a form of 'home grown' terrorism, as appeared in London and Amsterdam, whose relationship with foreign influences is far more difficult to interpret in terms of the laws concerning aliens.

#### 5 *An international approach?*

An international orientation is rooted in traditions which developed based on, amongst other things, the history of the international relations of (part and present) superpowers. The United States and United Kingdom in particular say they wish to contribute to solving regional conflicts in the Middle East and other countries where extremists originate or —more often — with whom they feel a connection (Palestine, Afghanistan, Iraq, Chechnya ...) in an attempt to reduce the breeding ground for extremism. South European countries (particularly referred to in the working document on Spain) are working towards cooperation with *all* Mediterranean countries (Euromed), also to reduce regional tensions. Would it be possible for the Netherlands to step up its role in the international field?

#### 6 *Informing the public without assisting terrorists*

As set out above in the summary, countries differ in how they inform the general public on terrorism and the efforts being made against it. There does not always seem to be an articulated and substantiated vision of the role which information should play. The working documents do, however, make casual mention of the different factors that play a role in this. For example, a UK document is quoted, which states that the public is kept informed of the developments, without helping terrorists to avoid the measures that have been taken. The idea that the other party is 'listening' has already led to the removal of a number of documents from Websites where they were originally accessible to the public. More explicit use of the available theoretical insights into the conditions in which the public may be involved in the policy is one of the options available.

#### 7 *Balance between security and freedom*

Some of the countries investigated are building giant databases with data taken from a range of sources, also including privacy-sensitive ones. Germany in particular has a tradition of 'Rasterfahndung'. Large databases are also being put together in the United States. The main difference between looking for patterns in databases and collecting information by means of *human intelligence* is that information gathering via informers and agents is aimed at specific individuals, while electronic analysis concerns large numbers of people, of whom only a very small number will be involved in extremism or terrorism. Critics have argued that

the 'identifications' are not always right and, moreover, difficult to correct. Supporters claim that this promotes the safety of these very same people. It goes without saying that the latter can be investigated.

# 1 Introduction

## 1.1 Purpose and research questions

Since the 11 September 2001 attacks, many countries, including the Netherlands, have taken a large number of measures aimed at combating radicalisation, extremism and terrorism. Many measures, both legal and organisational, were taken over a short period of time, in what was a fairly unknown policy field. To lay the foundation for obtaining an insight into the efficacy of this policy, the WODC — at the request of the Nationaal Coördinator Terrorismebestrijding (National Coordinator for Counterterrorism or NCTb) — carried out a first inventory of policies aimed at tackling terrorism in Germany, France, Italy, Spain, the United Kingdom and the United States<sup>1</sup>. The study's primary purpose was to present an overview of the measures taken in these countries. This first inventory therefore includes a broad range of policy fields.

The research questions for this study have been defined as follows:  
Which measures (including legislation and regulation) are taken in the field of combating radicalisation and terrorism and what are the considerations and assumptions in this?

This study was based on the following four questions:

- 1 How and to what extent do the (government) policies in the field of combating radicalisation and terrorism vary in how they are formulated, worked out and implemented?
- 2 How does this relate to the current insights into the causes and backgrounds of radicalisation and terrorism and to the distinguishable factors which are open to policy influencing?
- 3 Which specific policy measures have been taken? What are the targets, which means are being used and on which policy assumptions are these based?
- 4 What is known about the implementation and execution of these policy measures?

While the study is aimed first and foremost at the European and Dutch situation, it was decided to also involve measures from the United States, as this country — particularly in the period following September 2001 — took a large number of measures, about which a great deal is expected to be known.

Collecting information from the Netherlands regarding measures taken in other countries requires cooperation with researchers in the countries targeted by the study. In consultation with NCTb it was decided to focus on the five EU countries and the United States.

A separate route was followed for legislation issues. At the request of WODC the Radboud University Nijmegen made an inventory of legislation aimed at combating terrorism in the field of criminal law, including aliens law where relevant.

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<sup>1</sup> Originally, Israel was to be involved in the project, too, but this was decided against for practical reasons.

## 1.2 Methodological substantiation

### 1.2.1 *Inventory of measures taken in Germany, France, Italy, Spain, the United Kingdom and United States*

The researchers in the five countries were contacted in August 2005. An English-language *project description* was drawn up about the approach to be taken (see appendix 1). Partly based on literature<sup>2</sup>, this project description identified nine policy fields for attention:

- 1 prevention of radicalisation and recruitment
- 2 information of the general public
- 3 measures involving asylum and migration
- 4 special powers of investigation services
- 5 institutional developments, such as the set-up of coordination centres, etc
- 6 international cooperation and information exchange
- 7 combating the financing of terrorist organisations
- 8 securing critical infrastructure
- 9 crisis management: preparing for a coordinated and controlled response to a terrorist attack or crisis

Based on the agreements made with WODC, the inventory of counterterrorism policy was carried out by researchers in Germany, France, Italy, Spain and the United States.

In the end we found partners in the following institutes:

Germany	Max Planck Institute, Freiburg; (Michael Kilchling and Hans-Jörg Albrecht)
France	Institut des Etudes Politiques, Paris (Didier Bigo and Colombe Camus)
Italy	TransCrime, University of Milan (Martina Montauti and Barbara Vettori)
Spain	Institute for Criminology, University of Malaga (Alejandra Gómez-Céspedes and Ana Isabel Cerezo Dominguez)
United States	Boston, Anthony Petrosino, independent criminological researcher, now working for Wested (knowledge institute).

In the period up to February 2006 various versions of the working documents drawn up by our ‘correspondent researchers’ in the various countries were read and commented upon to increase the level of information on the above policy fields in the Dutch context. As the project progressed, the research question was defined further. In consultation with NCTb, the researchers received a list of issues per policy field. They were asked to focus on these in any event, to allow comparison between the working documents. The list comprised a further detailing within the nine policy fields indicated (see appendix 1). While some information is lacking for some fields in some countries, this does not mean that nothing has been arranged or is available for the issue in question. Since compiling an inventory is the key objective, the information differs for each country, for example as to the degree of detailing and the degree in which

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<sup>2</sup> Including Lum, Kennedy and Sherley (2005).

contemplative or critical comments on the policy have been incorporated in the working document. Since this is an inventory rather than a comparative study, we consider this variation acceptable.

In the United Kingdom talks were held with staff of the various departments of the Home Office in October 2005, particularly the Crime Reduction and Community Safety Group and the Terrorism and Prevention Unit. An interview was also held with a representative of the Foreign and Commonwealth Office. In addition, for the gathering of information on the policy in the United Kingdom use was made of literature sources and the Websites of the Home Office and of the British Parliament for Parliamentary Papers. No separate working document was written about the United Kingdom.

The working documents that emerged from this part project concentrated mostly on the most recent legislation introduced until end 2005. Previous developments in the history of terrorism and antiterrorism policies in each country were reviewed. These will be discussed in chapter 2.

### ***1.2.2 Study of counterterrorism criminal legislation in the five EU countries***

Prof Y. Buruma and Mrs M. Aksu LL M of the Radboud University Nijmegen carried out a delineated inventorying study on specific antiterrorism legislation in the EU countries. As for the inventory of measures in the nine policy fields (par. 1.2.1), the study was restricted to Germany, France Italy, Spain, and the United Kingdom. Moreover, it was restricted to criminal measures, although, where necessary, laws concerning aliens were also considered. The working document by Aksu, Buruma and Van Kempen also comprises a chapter on key Dutch legislation, which is used as a point of reference. This means that unlike in the remainder of the report, a comparison with the Netherlands has been included for some legislation.

In consultation with the WODC and the NCTb the following *key themes* were selected for the study in the field of legislation:

- new penalisation
- extension of powers of investigation
- extension of options to detain persons preventively
- use of intelligence in the criminal process
- restricting people in their preferred profession and access to financial means.

In creating the legislation overview use was made of drafts of working documents for Germany, France, Italy and Spain (par. 1.2.1). The working document of Aksu et al. was completed end March 2006. The layout in themes was later changed, as the use of information from intelligence services (intelligence) was barely considered in the material analysed, while other themes were treated separately. In the end, the following themes featured in the document:

- New penalisation and extension of existing penalisation
- Extension of (special) powers of investigation
- Extension of options for preventive detention
- Restricting people in their freedom to move and choices as regards their profession
- Onus of proof

- Crown witnesses
- Banning and dissolution of terrorist organisations and political parties

### **1.2.3 Overview counterterrorism legislation ‘other EU countries’**

At NCTb’s request and following on from the work carried out by Aksu c.s. (see above), WODC drew up an overview of counterterrorism legislation in the ‘other EU countries’, that is, all EU countries minus the Netherlands and the five countries in the study by Aksu et al. In preparation, a concept was drawn up, aimed particularly at the selection of information sources for this part of the project. In consultation with the NCTb the following information sources were selected:

- 1 EU/EVSE: Legislation online
- 2 Council of Europe: Country profiles CODEXTER Commission of Experts on Terrorism
- 3 Council of Europe (2005a): Terrorism: Special investigation techniques
- 4 EU: implementation of EU framework decrees and measures (EU, 2005)
- 5 Counter-terrorism Legislation and Practice — A survey of selected countries (FCO-UK, 2005).

These sources do not provide full information on all themes in all countries. The working document comprises an overview, which makes it clear for which countries these sources comprise information.

This part survey was carried out by *drs* Lisette Vervoorn and dr. Rudie Neve of the WODC between January and March 2006. The working document is entitled: Counterterrorism Legislation, an Overview of nineteen EU Member States. (Working document 7).

### **1.2.4 Policy conclusions not an issue**

This report does not pretend to be any more than a *first inventory* of a policy field that is still very much under development and in which a large number of measures have been taken, acts have been implemented and organisations have been set up or merged in a short period of time. Its aim is to provide an insight into the extent of the policy. A large number of policy fields were therefore covered, avoiding any intention to demarcate in advance subjects arbitrarily. A broad inventorying study does not pretend to make comparisons between the various countries. This report is aimed at creating conditions to be able to study the efficacy of policies on radicalisation, extremism and terrorism. It is not possible or desirable to draw conclusions as regards the content for the policy, such as the introduction of particular measures. This requires a different type of expertise, such as expertise on the operation, costs and effects of measures.

### 1.3 Study set-up

Chapter 2 describes briefly for each country the experiences with terrorism and counterterrorism before the emergence of Jihadist groups in Western Europe and '11 September 2001'. These descriptions were taken mostly from the working documents of staff operating in the countries<sup>3</sup>. No extensive study was carried out for this part and the descriptions are based on a 'quick scan' of the literature available and address mostly the history of (particularly domestic) terrorism in the countries in question. An attempt was made to show which lessons may be learnt from previous experiences in the current situation.

Chapter 3 deals with the successive policy fields. In consultation with the supervision committee it was decided to drop, where possible, the distinction between 'legislation' and 'policy' made at the start of the project. After all, all policy fields have both 'standardising' and 'organisational' measures. A new layout was therefore made, as set out below:

- Policy aimed at the prevention of radicalisation and recruitment.
- Policy revolving around information to the public.
- Policy aimed at institutional developments and setting up coordination centres.
- Policy with regard to the intelligence work: powers and exchange.
- Policy with regard to international cooperation.
- Policy aimed at securing the critical infrastructure.
- Policy and crisis management: preparing for a coordinated and controlled response to a terrorist attack or crisis.
- Policy aimed at combating the funding of terrorism.
- Aliens law, including measures on asylum and migration.
- Criminal measures.
- Measures in the field of criminal procedural law.
- Administrative measures.

These themes are discussed in Chapter 3, the key part of this report.

Chapter 4 presents the final conclusion. Since the central objective was to provide an inventory, the focus lies particularly on the question whether or not sufficient information has been generated and which questions deserve further elaboration.

#### *Terminology*

In principle, this study is about policies targeting all forms of (counter ) terrorism. Particularly in today's situation, after September 2001, this is often about religion-inspired or legitimised terrorism, for which the working documents use different terminology. This report often refers to the terms 'jihad' (sometimes 'jihadi') and 'Islamic' terrorism respectively. We are using these terms despite their disadvantages, particularly because the terms 'jihad' and 'Islam' have specific religious relevance for most Muslims. By adding 'ism', a specific meaning is created, that is associated with radicalism, extremism and terrorism. The term 'Islamic terrorism' is avoided in this report, as is the term 'fundamentalism'.

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<sup>3</sup> Where other sources have been used, these are specified. The authors of the working documents are responsible for the sources used.



## 2 Experiences with terrorism and counterterrorism in Germany, France, Italy, Spain, the United Kingdom and the United States

This chapter provides some context to the inventory of counterterrorism measures. It is based on the study in the relevant countries and on the report of the working visit which the WODC paid to the United Kingdom. The set-up of the paragraphs therefore differs slightly. As regards counterterrorism, some overlap with Chapter 3 is unavoidable<sup>4</sup>.

### 2.1 Germany

German experience with terrorism is connected with the Rote Armee Fraktion (RAF), also known as the Baader-Meinhof group, which existed between 1970 and 1998, but which was particularly active in the nineteen seventies. The RAF fell in the category of left social-revolutionary terrorist organisations, characterised by an explicit political programme and political objectives, whose final goal was to overthrow capitalism. An appeal was made to international coordination and cooperation between (national) terrorist groups<sup>5</sup>.

Initially, the group used arson as a means of coercion. It also visited a Palestinian training camp<sup>6</sup>. This was followed by its armed struggle in Germany, which involved armed bank robberies and bomb attacks. In 1972 the 'first generation' of RAF terrorists was captured and tried in Stammheim. They were able to communicate through their lawyer and used coordinated hunger strikes to protest against their solitary confinement in prison. Despite receiving forced nourishment, one of the RAF members, Holger Meins, succumbed to the effects of the hunger strike.

A survey carried out in July 1971 by the Institut Allensbach showed that 20% of Germans under the age of 30 felt some degree of sympathy for the actions of the RAF, which, incidentally, had not yet been very violent until that point. Following a series of heavy bomb attacks in 1972 (the 'May offensive') in which a number of people were killed, including printers in an attack on the Springerpers, sympathy soon evaporated. The information on the circumstances in which RAF members were being detained, however, led to many left-wing youngsters taking the side of the prisoners who were said to suffer from '*Isolationsfolter*'. The phenomenon of 'sympathisers' became an issue once more.

A new generation of RAF members was organising kidnappings aimed at getting the first generation out. They were successful initially: when prisoners were released in 1975, the release of hostage Peter Lorenz followed. In later kidnappings

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<sup>4</sup> Sources are specified for additions by the WODC, for other sources, please refer to the working documents.

<sup>5</sup> Working document 1 refers to Laqueur (1998).

<sup>6</sup> The historical overview of the RAF period is collated based on Internet sources in particular: wikipedia, baader-meinhof.com and geschichtsverein\_koengen.de.

(such as in Stockholm in 1975), however, the government would no longer make any concessions. Apparently, following their release, the released terrorists had become active for the RAF immediately again.

In 1976 Ulrike Meinhof was found dead in her cell. The official report that she had hanged herself with towels was doubted by many and gave rise to a number of conspiracy theories on her death. Outside prison younger RAF members started to commit assassinations, of which the one in 1977 on Siegfried Buback, head Public Prosecutor focusing on RAF, was one of the most well known.

The autumn of 1977 became known as the 'German autumn'. Chairman of the employers' organisation Schleier was kidnapped to force the release of the first generation of RAF prisoners. Almost at the same time a German airplane was hijacked by Palestinians, who also demanded the release of Baader c.s., as well as a number of Palestinians in Turkish prisons. The hijack ended in Mogadishu, where the plane was stormed by the specialist GSG9 unit which had been set up for this purpose (see below), whereby the hijackers were killed and passengers were released virtually unharmed. The next day, Baader, Ensslin and Jan-Carl Raspe committed suicide in their cells, after which Schleier was 'executed' by his kidnappers. The collective suicide inspired new complot theories: it seemed hard to believe that Baader had been able to smuggle a gun inside. At the time, the official explanation by the German government raised doubt in the Netherlands too<sup>7</sup>. Former RAF prisoners who were later released did confirm that the leaders of the first generation had indeed committed suicide.

Attacks claimed by groups calling themselves RAF were carried out as late as the nineteen eighties and early nineties. The latest murders claimed by RAF, particularly the murder of the Treuhand<sup>8</sup> director, inspired discussions on the 'RAF phantom'<sup>9</sup>. Its last violent act was an attack on a prison under construction in 1993. Nobody was hurt in the attack, but it did cause 50 million Euros worth of damage. In 1998 press agency Reuters received an 8-page statement in which the last RAF members declared the 'urban guerrilla' history.

Documents from the former GDR showed that the RAF had been supported by the Ministry of State Security and that a number of former RAF members had been given asylum there (working document 1).

Extremist rightwing terrorism in Germany surfaced in the second half of the nineteen seventies. It involved mostly small groups of neo-Nazis who tried to set up training camps in military style. In 1980 a bomb attack was carried out in Munich during the Oktoberfest, killing 13. More recently, young men with a tendency towards violence are being recruited, mostly in the Eastern parts of Germany, but elsewhere too, who are violent towards ethnical minorities, and other groups including Jews, left-wing activists, the handicapped and the homeless. In 2003 a group was dismantled which had aimed to attack Jewish targets. While the members had received only minimal training and organisation,

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<sup>7</sup> See: Deelen (2005).

<sup>8</sup> The 'Treuhandanstalt' was founded by the German government to organise the privatisation of state companies in the former GDR.

<sup>9</sup> In the television show Brennpunkt in 1992, journalists Gerhard Wisnewski, Wolfgang Landgraeber and Ekkehard Sieker argued that 'the third generation' of RAF never existed and that the murders of which it was being accused had been staged by secret services.

the Beieren High court sentenced them to long prison sentences (up to seven years). According to Albrecht there is a considerable overlap between extreme rightwing groups and organised crime, football hooliganism and ordinary violence (working document 1)<sup>10</sup>.

A third factor named in connection with German experiences with terrorism is 'imported' terrorism,' particularly the Kurdish PKK. Germany houses many immigrants with a Kurdish background, including supporters of the PKK. The PKK has been guilty of blackmailing Kurds in Germany and of carrying out attacks on Turkish businesses and consulates. In 1993 the organisation was banned in Germany. After a rename to KADEK, it is now known as KONGRA-GEL. While the organisation now claims it wishes to be a political party, German intelligence services still regard its potential for violence as substantial.

After 11 September 2001, transnational religion-inspired terrorism became the focal point in politics and police forces. According to Albrecht (working document 1) this led to a 'substantial review of the terrorist landscape as set out in official documents'. One of the points for discussion, as early as the nineteen nineties, was whether or not opportunities for asylum had helped foreign terrorists find a safe haven in Germany.

### ***Counterterrorism in the nineteen seventies***

#### *Hunt for 'sympathisers'*

The RAF refused to join the 'long march through the institutions', as favoured by 1960's student leader Rudi Dutschke. For the government the threat such an approach presented, however, was reason to implement strict measures. In 1972 the '*Extremists Decree*' was adopted, which entailed, amongst other things, that many officials were tested for their democratic convictions. The resulting prohibition to pursue their profession also inspired criticism from the Netherlands. The extended powers to stop or arrest people were criticised for mainly targeting youngsters with 'deviant' looks (such as long hair)<sup>11</sup>.

According to Albrecht (working document 1), the emphasis in the counterterrorism strategy has always been on the criminal approach, with the idea of 'sympathy' being approached from the same context. According to the author, there were no far-reaching counterterrorism strategies. The discussion on 'sympathisers' emerged when author Heinrich Böll was accused of having RAF sympathies when he published his book '*Die verlorene Ehre der Katharina Blum*' in 1974<sup>12</sup>.

According to Albrecht the approach of the nineteen seventies, which narrowed the gap between legislative and executive powers, was characterised by a 'politicising of criminal law', focused on the question how the RAF hard core could be separated from its sympathising environment.

#### *Process legislation*

The German Penal Code was amended to exclude from the legal process certain lawyers of RAF members regarded as 'sympathisers'. The act was sometimes

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<sup>10</sup> See also: Adang, O., Rapport Football Hooliganism Doc 8553, EU 1999.

<sup>11</sup> It is not yet clear if these measures are based on a well-defined idea on the radicalisation process, or an 'intervention theory'.

<sup>12</sup> See Böll (1974).

referred to as the 'Lex BM' (after 'Baader-Meinhof') and came into force on 1 January 1975<sup>13</sup>. It comprised a number of acts, including provisions to allow court sessions, even if they were not attended by the suspects due to their own doing, for example because they were on hunger strike. The use of a single lawyer by more than one suspect was forbidden to prevent the lawyer from acting as 'liaison' between the suspects, who were not allowed to be in contact. Critics regarded the measures as an unacceptable violation of suspects' rights<sup>14</sup>.

#### *Establishment of special assistance units*

Besides the RAF attacks, Germany was also confronted with Palestinian terrorism. In 1972 the Olympic Games were held in Munich, and it was here that the Palestinian 'Black September' group held the Israeli athletics team hostage. Until that point the German government had been very reticent about setting up elite units for army and police: memories of the Second World War and the Nazi regime were still very fresh. This attitude was also reflected in the 'low profile' security at the Olympic village. Palestinian terrorists were able to penetrate the village and take the Israeli team hostage. When the hostage takers were about to flee in helicopters, the police commenced a fire fight, with the worst possible outcome: in addition to the terrorists, all athletes taken hostage were killed. After the events a national special unit was set up, which for reasons of historical sensitivities reported to the Bundesgrenzschutz rather than the army. Grenzschutzgruppe 9 (GSG9) was given a hero status in the BRD when it liberated the airplane in Mogadishu in 1977 which had been hijacked by Palestinians<sup>15</sup>.

#### *Lessons learnt from the RAF period*

In an interview in 1995, Hans-Jürgen Wischnewski, a high-placed counterterrorism official in Germany and leader during the liberation of the hijacked plane in Mogadishu in 1977, discussed the lessons that could be drawn from these episodes for German history set out above<sup>16</sup>. Wischnewski states that the events of 1977 contained key lessons for countries that were dealing with terrorism at the time, including Japan and the United States (which had just experienced the 'Oklahoma bombing'). In 1977 a crisis team was set up that spanned a broad political spectre, with loyal cooperation from the Christian democrats, who were in the opposition at the time. He also emphasised the importance of analysing the backgrounds of the terrorist movement, whereby it was particularly important to stay alert in respect of groups facing a serious degree of *alienation*. It was up to the government to ensure that its legitimacy or that of the security services was not doubted amongst the (democratic) population. Radical developments should be detected at the earliest stage possible. In addition, the availability of special units was considered very important, with Wischnewski referring to the German GSG9.

Wischnewski's advice to get an understanding of the backgrounds of radicals was picked up by the German government in its actions targeting Islamic radicalisation. After all, Germany was directly involved in this, as the 11 September

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<sup>13</sup> The so-called 'Anti-Terror-Paketgesetz' was adopted in the Bundestag on 20 December 1974 [www.geschichtsverein-koengen.de/Terrorismus.htm](http://www.geschichtsverein-koengen.de/Terrorismus.htm).

<sup>14</sup> Taken from [www.baader-meinhof.com](http://www.baader-meinhof.com), the website created by Richard Huffman, son of an American member of the bomb disposal squad in West Berlin in the early nineteen seventies, who became fascinated by the group. There are many other sources, including the site referred to in the previous footnote.

<sup>15</sup> [www.terrorism101.org/counter/germany](http://www.terrorism101.org/counter/germany).

<sup>16</sup> New Perspectives Quarterly, summer 1995 'Lessons from German Counterterrorism. [www.npq.org](http://www.npq.org).

2001 attacks had been carried out by a cell headed by Mohammed Atta, who had been based in Hamburg. As we will discuss below (par. 3.10), Germany, too, has drawn up new legislation for its fight against the terrorism of the 21<sup>st</sup> century. However, the German government has also attempted to stimulate the discussion about the backgrounds of radicalisation, for example by commissioning a collection of articles written by legal specialists, Islam experts and social scientists, entitled 'Feindbilder und Radikalisierungsprozesse'<sup>17</sup>.

It is not clear exactly to what degree the side-effects and controversies of the RAF period form the basis for this, although it is clear that the German government tries to document and evaluate the measures it has taken. Actual results are not yet available, as far as known<sup>18</sup>.

German counterterrorism policy since 2001 is set out in the three 'packages' of measures and legislation dealt with in working document 1.

According to official statements, counterterrorism policy was assigned five objectives after 2001:

- The destruction of terrorist structures by putting terrorists and terrorist groups under severe pressure by means of investigations,
- Prevention of terrorism from developing by controlling extremism through banning radical organisations and putting immigration and borders under strict control,
- Enhancing international cooperation and data exchange on suspect immigrants and terrorists,
- Protection of the public and the sensitive infrastructure through permanent monitoring and threat analyses and by providing intensive security measures,
- Removing the causes of terrorism by contributing to missions aimed at creating international peace and stability.

The policy was reflected mostly in new legislation, which comprises not only amendments to the law but which has also been combined with fund allocation and taking organisational measures. Three 'counterterrorism packages' are distinguished.

The first package of amendments is aimed particularly at stepping up immigrant control of people travelling from Arab countries, inspired by the German connection in the New York attacks, which had been prepared in part from Hamburg. Measures in the field of aliens policy and creating databases to look for potential terrorists were taken to promote risk containment. The first package also announced strengthening of the army and the purchase of special weapons to fight terrorism. It was adopted shortly after 11 September.

The second package of amendments is also known as 'Gezets zur Bekämpfung des internationalen Terrorismus'. It aims particularly at fighting international terrorism and comprises a series of amendments to existing acts, aimed mostly at improving

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<sup>17</sup> See: [http://www.bmi.bund.de/nn\\_122688/Internet/Content/Broschueren/2005/Feindbilder\\_\\_und\\_\\_Radikalisierungsprozesse.html](http://www.bmi.bund.de/nn_122688/Internet/Content/Broschueren/2005/Feindbilder__und__Radikalisierungsprozesse.html).

<sup>18</sup> [http://www.bmi.bund.de/cln\\_012/nn\\_174236/Internet/Content/Broschueren/2004/Nach\\_\\_dem\\_\\_11\\_\\_September\\_\\_2001\\_\\_Massnahmen\\_\\_Id\\_\\_95066\\_\\_de.html](http://www.bmi.bund.de/cln_012/nn_174236/Internet/Content/Broschueren/2004/Nach__dem__11__September__2001__Massnahmen__Id__95066__de.html).

[http://www.bmi.bund.de/cln\\_028/nn\\_165104/Internet/Content/Themen/Terrorismus/DatenundFakten/Evaluierung\\_\\_Terrorismusbek\\_C3\\_A4mpfungsgesetz.html](http://www.bmi.bund.de/cln_028/nn_165104/Internet/Content/Themen/Terrorismus/DatenundFakten/Evaluierung__Terrorismusbek_C3_A4mpfungsgesetz.html).

cooperation between the various investigation and security services. The act was introduced on 1 January 2002. The measures from the first two packages were stepped up and included in the third package 2005. The latter's key aims are the enhancement of preventive powers for the Bundeskriminalamt and the set-up of databases with even more information. The elections disrupted the discussion of the package, but the author of working document 1 on Germany does expect the new government to continue its treatment.

## 2.2 France

France has been dealing with terrorist attacks since the early nineteen seventies, both in its mainland and on French targets abroad<sup>19</sup>.

Between 1986 and 1996 there were 23 bomb attacks attributed to Islamic movements. After 9/11 no new attacks have occurred in France and networks preparing for attacks, for example on the Eiffel Tower (1994), the Stade de France (world championships football, 1998), the Christmas fair in Strasbourg (2000) and the American embassy in Paris (2001) were dismantled.

The counterterrorism system now in place is the result of a long-term and indirect process. According to the authors of the working document on France (working document 2) it is not a constant or coherent process. French counterterrorism policy is not based on a thorough analysis of the terrorist threat, but developed in a pragmatic manner in response to the various attacks that had taken place over the years. According to working document 2 the French authorities developed a strategy relying on preventive arrests to put potential terrorists under constant pressure.

The tradition to distinguish between 'common' and political crimes, to which special rules apply, dates back to before the Second World War<sup>20</sup>. Symbol for this exceptional situation was the 'Cour de la Sûreté de l'Etat' (CSE, Court for State Security), founded in 1963 in response to the Algerian war of independence. The CSE included military input and operated entirely outside the normal legal system as a separate legal institution. The CSE was abolished in 1982 as a relic symbolising 'old times', following its tackling of Breton nationalism in which certain activities were found not to be permitted. The government no longer wanted these special courts, as they seemed doomed to be inefficient and eventually always lapsed into irregularities. This did have a disadvantage, namely that knowledge on violent political actions and groups was now distributed across a number of judges. Special Assize courts (jury courts) were founded for espionage affairs, which was also assigned cases involving terrorism by the Act of 1986. This episode has determined the further development of the French counterterrorism system. The anti-terrorism Act of 1986, made when violent actions on French territory intensified, is considered a key milestone in recent history. This Act forms the cornerstone of French legal counterterrorism.

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<sup>19</sup> Fifty attacks were carried out between 1977 and 1987 under the flag of the extremist leftwing organisation Action Directe. In 1981 most members gave up their 'armed battle' after an *amnesty scheme* by the French government. Groups in Paris and Lyon were unwilling to give up yet. In the nineteen eighties the Paris branch of Action Directe was associated with the German RAF. The branch in Lyon started carrying out anti-Semitic attacks. (Also see Moxon-Browne, 1988).

<sup>20</sup> According to the report 'from the third republic'. The third republic lasted from 1871 to World War II.

Since then the French counterterrorism system has been characterised by a centralised and specialised legal process, its emphasis on 'human intelligence', a firm legal and political framework for antiterrorist operations, the use of investigating judges with powers of attorney for investigation, surveillance, detention and interrogation, the relationship between legal and intelligence organisations and the emphasis on effective cooperation between the organisations involved and which has developed over the course of many years. Important was also that in the nineteen eighties realisation grew that the counterterrorism system should be part of the normal legal system rather than something completely separate. After all, this would mean that political shifts could completely eradicate them, as was the case for the CSE in 1981.

While Prime minister Chirac declared in 1986 that 'terrorism is a form of war', in practice a legal and police strategy fighting terrorism was developed while 'acts of war' were avoided where possible<sup>21</sup>. Focal point of the strategy was to deny any form of legitimacy to the revolutionary and nationalistic struggle and to approach it, particularly from a procedural point of view rather than from the content, within the definition of terrorism. Terrorism was conceptualised as being limited to small groups actually committing the violence, which presented an opportunity to start discussions in a pragmatic way with the broader political movements associated with terrorist groups<sup>22</sup>.

The question is to what extent such a pragmatic approach is viable now the world is facing transnational and religion-inspired terrorism. It became a hotly debated topic after 11 September 2001. After all, France had now also become a possible target of international Islamic terrorism. Nevertheless, 9/11 is said to be a 'non event' for French counterterrorism policy, in the sense that the strategy has not really been adapted following the attack, as this had already been done in the nineteen eighties.

The Act of 1986 redefined the system of counter terrorist efforts in France. Not wanting to return to the old State security court (CSE), the French government was given means to fight terrorism which were 'exceptional' according to the researchers. They also refer to the fact that part of the population is concerned about the (lack of) respect for the constitutional state. The Act of 1986 concerned in particular the addition of subjective elements (terrorist motivation) to 'common' crimes. In addition, situations regarding arrest and pre-trial detention were extended to include terror cases while a central organisation for the prosecution of terrorism was set up as part of the Public Prosecutor's Office (*ministère publique*). All subsequent adaptations of the policy, reflected in new legislation, served to reinforce or expand the basic set-up first created in 1986. Recent developments could suggest a return to the days of the CSE. The new system was tried and tested when around 1990 the Algerian civil war was transposed to France. The emergence of the armed Islamic group GIA, a splinter group of the FIS (Islamic Salvation Front) which had been forced into illegitimacy following the military coup carried out after the elections which had been won by the FIS. The group united all radical Islamists and was supported by similar groups in other Middle East countries. It also brought the movement into contact with Islamic militants already present in

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<sup>21</sup> This explains the French criticism of the US attack on Iraq.

<sup>22</sup> Bigo c.s. refer to British and Spanish examples of negotiations by the government with political parties linked to terrorist organisations.

Europe. France was a special target for these groups, not only for its colonial past, but particularly due to its alleged unofficial support of the military junta. The nineteen nineties saw a range of elaborate operations against Islamists in France. GIA responded with the hijack of an aeroplane at Christmas 1994. When French commandos attacked at Marseille airport, all hijackers were killed. This was followed by the dismantling of networks of Islamists in different French cities, but the intelligence services failed to discover the existence of some networks, which then commenced a counterattack. This was the start to a wave of Islamic attacks which started with the attack on the St. Michel metro station on 25 July 1995 which came as a surprise to the French government (the working document comprises an overview of the attacks carried out). According to working document 2 this wave of attacks was not so much 'Islamic' terrorism but part of the long and complicated history of the relationship between France and Algeria. Unlike the nineteen eighties, the French government did succeed this time in picking up the offenders shortly after the attacks and to dismantle their networks (working document 2).

In 1996 French counterterrorism legislation was further reinforced with the inclusion of the notion of 'conspiracy' (see par. 3.10.2 on new penalisations in legislation). This went a long way towards the return to the 'situation of exception' and the French researchers voice their concerns about the sliding scale of prosecuting crimes that have not (yet) taken place. French legislation in the nineteen nineties may be regarded as the forerunner of today's ideas on how to fight terrorism, which took a firm hold after 2001 in other countries, too. Part of the approach comprises the use of extensive arrests to put networks under pressure and to sow fear. The idea is that interrogations of those under arrest can yield useful information. In response to criticism voiced, the government argues that the appointment of investigating judges with extensive powers is to be preferred over the exceptional situations created in the United States under the Patriot Act. Nevertheless, some are concerned that "...The emphasis on security could in the short term affect legitimacy in the long term". The French counterterrorism policy is presented as highly efficient, but., according to critics, this has come at the cost of some basic freedoms<sup>23</sup>.

An important difference with earlier years was that the attacks in the mid nineteen nineties were regarded as a problem that had developed within France itself. The backgrounds to the French involvement in the Algerian problem were neglected. The notion of a multinational Islamist 'movement' not restricted to any specific region was also first accepted in the nineteen nineties. This also dispelled the background previous ideas that terrorism was to be eradicated by dismantling one or several networks. People have become somewhat more modest in this respect, according to working document 2.

The events of September 2001 have motivated the French in their approach to terrorism and the idea that they were right to take this approach. The French model is taken as an example for other countries. The development of the model no longer takes place in response to terrorist actions, but follows its own logic in the European and international 'security movement', with a preventive and proactive aim. Working document 2 signals a difference between the French and the American approach: the idea that terrorism can be eradicated by means of a

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<sup>23</sup> The author of working document 2, Didier Bigo, carried out a number of critical studies with others, for example in the ELISE project, and wrote on French policy ([www.libertysecurity.org](http://www.libertysecurity.org)).

'war on terror'<sup>24</sup> is not accepted here. Instead, damage inflicted by this phenomenon that is here to stay with us for many years must be minimised. A new period started with the introduction of a new terrorist act which was still being discussed in parliament at the time working document 2 was being written. This Act has a strong focus on *surveillance* by means of information and communication technology, while the French system previously leaned heavily on *human intelligence*.

A 'white book' (livre blanc) is also in the process of being drawn up, setting out the French approach based on the work of six working groups<sup>25</sup>.

As regards Islam, France is taking a two-track approach: promoting the organisation of Islam in France and fighting radical Islamism. Globalised Islamism has been designated as the key strategic threat after 2001. This approach is shared by most governments on the European and international stage, which has led to a policy of adaptation and extension of legislation and reinforcement of international cooperation ('adaptation and cooperation imperatives') which feature strongly in the European recommendations. These have been implemented in full by France.

As regards studies on counterterrorism, working document 2 simply reports that the study into the efficacy, efficiency and lawfulness of counterterrorism policy is the responsibility of the '*ministers in the executive branch that have a role in combating terrorism*'. This is regarded a management aspect rather than an independent investigation or evaluation aspect.

### 2.3 Italy

Terrorism in Italy is divided into left ('red terrorism') and right ('black terrorism') subversive organisations, which both developed in an environment of social, political and institutional crisis (working document 3). Right-wing movements were inspired by neo-fascist ideology and it is assumed that there were mutual ties with the SID secret service and a political freemasons' lodge (P2). A number of massacres were carried out. Left-wing terrorism was inspired by communism and developed from student and workers movements, who refused to accept government authority and claimed to stand up for the interests of the less fortunate. Examples are the Red Brigades (Brigate Rosse, BR). Both camps aimed to inspire tension amongst the population and thus undermine government.

In the nineteen seventies an armed conflict existed between the left-wing and the right-wing groups. The birth of Italian terrorism has often been related to the foundation of the BR in 1971, but a first series of bomb attacks took place as early as 1969, with one attack killing 17 and wounding 88 in Milan. It is a period that remains dark until today. According to sources specified in the working document, all parties, i.e. both left-wing and right-wing subversive groups, maintained unclear ties with the secret services.

Terrorist violence penetrated society and public opinion. Right-wing groups aimed at attacking places where large numbers of people gathered, such as trains and, in

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<sup>24</sup> Recently, discussions in the United States have referred to the 'long war', an analogy with the 'cold war' against communism. See for example. Carafano and Rosenzweig (2005).

<sup>25</sup> This 'livre blanc' has since been published, but the English version was still unavailable during the writing of this report.

one case, a demonstration of workers. The left-wing groups focused mostly on symbolical figures, which culminated in 1978 in the kidnap of Christian-democratic leader Aldo Moro<sup>26</sup>. According to some sources this was the darkest period in the history of the Italian Republic (which was founded after WOII). Characteristic for the nineteen seventies was the use of symbols (the BR star) and slogans such as the fascist battle cry 'boia chi molla'<sup>27</sup>.

The end of this episode was marked by a bomb attack on the Bologna railway station, killing 80. The attack had been committed by the 'black' terrorists of the 'armed revolutionary cores' (NAR) and it signalled the disintegration of the right-wing terrorist movement. According to working document 3, the electoral success of the neofascist party also contributed to this development.

The emergence of Italian terrorism in the nineteen seventies led to a refinement of legislation, which had been found inadequate. New measures were introduced urgently, whereby *punishment* of terrorists was considered an important tool. For this purpose, new offences were included in the penal code, sentences were stepped up and the period for which a person could be detained in preventive custody was extended. Powers for observation, wire-tapping, etc. were expanded. In 1980 Section 270bis was introduced, which contained the first ever express referral to terrorism in legislation (see par. 3.10.1).

In the nineteen eighties terrorist groups became weaker under the influence of the economic boost and reduced emphasis on ideological differences. The 'second generation' of terrorists was less motivated and the BR fell apart into a number of factions, of which the PCC (Partito Comunista Combattente) emerged as the most important one.

In response to the division amongst terrorists, counterterrorism efforts shifted towards stimulating cooperation by disloyal terrorists with investigation services. In 1982 the 'pentiti' act was introduced, aimed at organised crime as well as terrorism. This allowed people who were distancing themselves from their terrorist pasts to qualify for a reduction of their sentence, particularly if they were prepared to collaborate with the justice department to inform on their former comrades.

After the collapse of communism in Eastern Europe, the contradiction between 'left and right' lost most of its relevance, according to working document 3. The ideological movements scattered into numerous tiny groups with their own ideologies, no longer bound by national borders. Globalisation became the key word for these new groups, both left-wing and right-wing. International extreme rightwing movements (such as 'skinheads' and 'neo-Nazis') also surfaced in Italy. To the left are groups of 'other globalists' who sometimes adopt subversive forms, such as the 'black blocks', and there is the PCC, a descendant of the Red Brigades. Other than the 'subversive' black blocks, the PCC rather fits the description of a terrorist group. In 2002 it claimed a political murder (on top official prof. Marco Biagi).

An ambiguous attitude towards globalisation is common. On the one hand globalisation is denoted as the enemy for its capitalistic models and the cultural

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<sup>26</sup> Popular Aldo Moro pleaded for a 'historic compromise' with the communists, as set out in working document 3.

<sup>27</sup> Which translates as "Who recoils is a piece of shit".

uniformity it implies. On the other hand, globalisation facilitates groups in disseminating ideas, for example via the Internet.

In 1990 the policy on counterterrorism in Italy, which up to that point had been about repression (nineteen seventies) and stimulating ‘pentiti’<sup>28</sup> (nineteen eighties), shifted towards the prevention of attacks. International cooperation became more important too. Especially after the attacks of 11 September 2001 in the United States a range of measures was taken. These are discussed in Chapter 3, focusing on the various policy fields.

## 2.4 Spain

The history of the Spanish efforts in the field of counterterrorism is dictated by its experiences with Euskadi Ta Sakatuna (ETA, Basque country and Freedom). This organisation developed as an ideological alternative to the PNV (Partido Nacionalista Vasco, Basque Nationalist Party) which was found to be too moderate in its resistance against the dictatorship of General Francisco Franco, which lasted until 1975. Founded in 1959 by young nationalists, ETA aimed to ensure the conservation of the Basque language and ethnicity and an autonomous Basque state in the Basque areas in the northeast of Spain and the southwest of France. From 1965 it adopted a Marxist Leninist political course, with many diversions over the years.

Gradually its actions shifted from destroying Spanish symbols to assassinating people associated with the suppression by Spain. By far the most important and famous attack by ETA was the murder in 1973 of Admiral Carrero Blanco, the appointed successor of Franco. The attack was a response to the execution of Basque nationalists and was massively supported by the opposition in exile abroad. According to the Spanish researchers, the attack was seen by many as a contribution towards the establishment of democracy in Spain. In general., ETA received considerable support during the Franco dictatorship, which extended outside the Basque population. When the dictator was overthrown, ETA radicalised further, and support amongst the population gradually subsided.

Over the years, the Batasuna party associated with ETA (previously known as Euskal Herritarrok and Herri Batasuna) received 10 to 20 % of the votes in Spanish Basque country. The status of the party is a controversial issue in Spain. While the Spanish courts, like many others, found that the party is merely the political arm of ETA, the party itself has always denied this. In 2003 the party was banned as terrorist organisation and placed on the list of terrorist organisations by the United States and the EU<sup>29</sup>. The party was refounded as Aukera Guztiak but again banned as a continuation of Batasuna under a different name. Again a new party was founded, the Basque Communist Party<sup>30</sup>. Despite these bans and re-foundations, the party won 12 percent of the votes in the elections for the Basque parliament.

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<sup>28</sup> According to Albini (2001), quoted in working document 5, this policy was effective not only against the mafia but also the Red Brigades, who were significantly subdued by government policy, according to the author

<sup>29</sup> See also: working document 4. p. 46 on the Spanish Act on Political Parties.

<sup>30</sup> A study has commenced to see if the Basque Communist Party must be regarded as a continuation of Batasuna and should therefore also be banned. However, ETA has since called a permanent truce and the government may consider allowing the associated political party under a different name. (See NRC ‘Joy and anger over ETA truce’, 23 April 2006).

ETA is accused of maintaining connections with other terrorist organisations (particularly the IRA) and regimes (Cuba, Libya) and recently was said to have connections with organised crime. In particular, ETA is thought to be involved in drugs trade to finance its activities. Reference is made to barter trade with ETA exchanging drugs for weapons and explosives with the Neapolitan Camorra.

As regards the development of counterterrorism measures in Spain, working document 4 casually refers to death squads set up by the government as early as the nineteen eighties (GAL). After these started to operate on French territory the French government decided to take a firmer stand against ETA, which for a long time had been regarded as a group of political refugees. Since then various high-ranking ETA officials have been arrested in France and sentenced there or extradited to Spain, sometimes following accelerated procedures.

On 22 March 2006 ETA announced a 'permanent truce'.

As pointed out before, the subject of terrorism has always been dominated by the ETA in Spain. Meanwhile, cells of radical *ihadists* have emerged in Spain, as became clear instantly in the attacks in Madrid of 11 March 2004, killing 189 and injuring 1460. Following these attacks police activities targeting Islamic terrorists in the country were intensified. These activities also revealed groups acquiring funds for foreign Islamic groups.

Since 'Madrid', a more proactive approach has been in place in Spain while substantial additional funds have been set aside for the prevention and combating of terrorist attacks as well as for the support of victims these attacks cause in the country.

## 2.5 United Kingdom

In a study on British experiences with terrorism Wilkinson showed that successive British governments have always regarded internal violence mostly as a *colonial* problem, controlled by the British army. The fact that terrorism, a guerrilla war or violent insurrections would occur in the homeland was deemed unthinkable for quite some time<sup>31</sup>.

In a number of countries where the British handed over power peacefully to independence movements, violence broke out prior to the transfer. The political problems associated with this, says Wilkinson, were caused by issues in the past, rather than British politics, although mistakes were certainly made. Clashes often occurred between various ethnical groups (take for example Palestine, or Cyprus, Aden, and Rhodesia). In the case of some organisations, such as the ones in Palestine (Haganah, Irgun, Stern), Cyprus (EOKA), Aden (FLOSY), terrorism played a significant role.

Wilkinson refers of the use of terrorism as one of many weapons available to these groups ('the terrorist weapon', p. 3) and states that not only the United Kingdom, but other colonial powers too (including France) were faced with violent groups.

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<sup>31</sup> See: Wilkinson (1981).

The British army developed a wealth of practical knowledge on guerrilla warfare and urban terrorism in these complicated situations overseas. The successes of some movements inspired other 'anti-colonial terrorism' along this model, also in the West. According to Wilkinson, the IRA was an example<sup>32</sup>. The history of the Northern Irish conflict goes back a lot further<sup>33</sup> with some Irish republicans claiming that the British 'occupation' of the island and the fight for freedom goes back 800 years. A more official account pinpoints its root in 1688, when Dutch King William beat Catholic King James who had fled to Ireland near the Boyne, a battle which is commemorated to this day by protestant unionists walking the Orange marches in July. The 'Troubles' peaked in 1969, when the Royal Ulster Constabulary responded violently to protests by Catholics demanding more civil rights, which led to an escalation of violence. The old Irish Republican Army (IRA) which had forced the British into negotiations in the early twentieth century with the use of violence, remained too passive in the eyes of some of its members, which resulted in the foundation of the Provisional IRA as a splinter group of the official IRA. Since then, the IRA is usually referred to as the *Provisionals* ('provos'). In response, the British introduced laws which enabled the detention of suspect IRA supporters without trial to be able to suppress the protests. Protests against these measures led to a downright crisis in 1972. 13 civilians were killed by the army during a protest march (*'bloody Sunday'*), after which the IRA's popularity grew. The Northern Irish parliament was dissolved and Northern Ireland was governed from London. Various very violent episodes followed until 1998, when the Good Friday agreement was signed between the republican (catholic) and loyalist (Protestants) parties. The IRA has not committed any attacks since then, although there was some violence involving republican and unionist splinter groups.

The Irish conflict awoke the British from their dream that the end of the colonial era would equal the end of terrorism. The 'troubles' soon led to the use of the army, the first time that the army was involved in a domestic conflict in over a hundred years. The Royal Ulster Constabulary was unable to contain the situation. The army was walking a tight rope between acting too forcefully and too leniently. The British knew from experience that overreaction always played the hand of terrorists (based in part on their experiences in Northern Ireland in the early nineteen seventies). As the conflict unfolded, the British army started to use more and more subtle methods<sup>34</sup>.

### ***Counterterrorism in the United Kingdom***

Most of the counterterrorism measures currently in place in the United Kingdom were developed in the period following September 2001. British experience with terrorism goes back further and — as set out above — always related to its colonial past. Experiences with terrorism in the country itself were found before 1969, as was revealed quite recently in documents published by intelligence service MI5. Shortly after the Second World war both Irish and Zionist terrorist groups, who had been active before the war, attempted to set up cells in London targeting British

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<sup>32</sup> See: Wilkinson (1981).

<sup>33</sup> The brief summary of the Troubles in this paragraph was taken from the relevant file from The Guardian.

<sup>34</sup> Wilkinson (1981).

### **Box: Lessons for the current situation?**

In a congress paper Richard Bulkeley of the University of Calgary made an attempt to describe the lessons to be drawn from the British experience gained post 9/11\*. The author wants to use these lessons in the United States, and argues that lessons that apply to Great Britain will also apply there as the two countries share great similarities. Bulkeley also draws parallels between the IRA in its heydays ('arguably the world champion of terrorism', p. 2) and Al Qaeda. This happens, for example, based on the argument that it is possible to compare 'republicanism' with the religion of Islamists as regards the power of faith in its supporters. In terms of organisation (network with rather loose cells) and type of supporters (most with average education, special tasks are reserved for the higher educated supporters) there are also similarities. Even leaving these aside, Bulkeley states that the lessons learnt from British experiences in Northern Ireland can be regarded as 'general principles of counter-terrorism'. The means the British used in their battle with IRA included intelligence, Special Forces and influencing the media.

According to Bulkeley the following lessons may be drawn:

- According to Bulkeley, *intelligence* plays an important role in planning actions against terrorism. (Further) damaging relationships with communities that could support terrorists must be avoided. While technological means are also used, *human intelligence* plays the key role in gathering intelligence. Suspects were sometimes put under pressure to work as informers for the British. An important side-effect of recruiting informers in the IRA was that the organisation was forced to set up an internal security department to trace and remove informers ('touts'). The distrust versus potential informers affected the cohesion within the community in which the terrorists operated. The mistakes that were made, such as false confessions obtained through torture, also contributed to a climate of distrust and put the population's support to the organisation under pressure. Bulkeley emphasises the demoralising effect of the presence of informers and addresses this point in great detail.
- Even more important is perhaps the gathering of *low level intelligence*, which makes it harder for terrorists to move within their environment. From the nineteen seventies the British started to collect detailed door-to-door data on residential areas. They started to develop an understanding of the enemy. Checkpoints (used frequently in the nineteen seventies, also referred to as Vehicle Check Points or VCPs) also served to gather 'low level' intelligence. These measures, however, also put the local population under pressure. The computer registration of vehicle registration numbers (Vengeful) took some of the pressure off as it reduced the need to stop so many cars.

\* See: Bulkeley (2001).

- Bulkeley (2001) saw the use of the *regular army* as problematic: soldiers acted mostly as target for the gunmen and could easily hurt or kill innocent bystanders. In the aim to capture the hearts and minds of a population, this is a serious disadvantage. The viewpoints of the republican Northern-Irish in particular radicalised. The presence of armed British soldiers rather legitimised the IRA's claim that Northern Ireland was British occupied territory. According to Bulkeley, the regular army is not a very suitable instrument to fight terrorism.
- The use of the *Special Air Service*. The SAS had an almost legendary reputation in British culture. According to the author, the actual number of units deployed did not warrant the psychological effect on the Northern Irish conflict. Yet the IRA suspected SAS involvement in every failed mission. According to Bulkeley, however, SAS' main contribution was its competency training on observation skills for example. Other countries have learned from this deployment of Special Forces. Incidentally, the legendary and at the same time secretive reputation of the SAS also meant that the accusation that the SAS also acted outside the law as *assassination squad* was given some credibility in the Northern Irish public opinion, emphasising the importance of the battle for people's hearts and minds.
- In comparison with other conflicts in which the British army was involved, the proximity of the battle in Northern Irish meant the British press followed it much more closely. The possible impact this had on public opinion made the British realise the necessity of the, up to a certain extent, *monitoring of information on the conflict*. Since the democracy ruled out direct censorship, more subtle means were used to promote favourable media attention for the British. One of these methods was assisting journalists in gathering news. On the other hand, negative information in the British press was regarded as a signal that public opinion was turning against the battle, a signal that needed to be taken into consideration.
- In addition to the more subtle influences, use was also made of more direct *propaganda*, whereby stories to influence the outcome of the conflict were circulated. The report mentions how the loot of armed robberies by the IRA was always exaggerated, which could lead to internal investigations within the IRA. The resulting punishments harmed the IRA image, says the author. Public opinion was influenced by the 'criminalisation' of the IRA, the result of prosecuting the acts as ordinary crimes rather than lending them a special status as 'terrorists' crimes.

The conclusions Bulkeley draws for the United States are the following: reinstate human intelligence which has been neglected in the United States and improve low level intelligence by gaining knowledge and an understanding of the situation of the people involved (as in the Middle East).

ministers<sup>35</sup>. No literature has yet been found on any articulate counterterrorism politics from that period.

Following the Northern Irish *Troubles*, British terrorism control units had accumulated a wealth of expertise and experience. In the interviews which the WODC had within the framework of this survey with representatives from the British Home Office, the Ministry of the Interior and the Ministry of Justice, the representatives of the various departments were unanimous in their opinion that these experiences would prove of little use in tackling *jihadi* terrorism in the United Kingdom, which had placed itself in the spotlight with its London attacks in July 2005.

The Troubles inspired the first counterterrorism measures and the accumulation of a wealth of experience in their application. The first *Prevention of Terrorism Act (Northern Ireland)* was gradually developed from 1974 to 1989 and specifically targeted the situation in Northern Ireland. The Act provided for issues such as emergency powers for police and the ban of paramilitary organisations, criminalizing membership and/or (financial) support of these organisations. A measure unique to the United Kingdom was the introduction of courts without jury, the *Diplock courts*. These were set up in 1972 based on the report by a commission chaired by Lord Diplock, when it appeared that jury members in Northern Ireland were intimidated by paramilitary groups. After the Good Friday agreement it was announced that the Diplock courts were to be abolished. A recent report of *independent reviewer* Lord Carlile (see below in this paragraph), however, suggests that they should be kept for now as the situation in Northern Ireland justifies this as dissident paramilitary organisations are still active. Incidentally, the report claims that they are becoming increasingly involved in organised crime. Nevertheless, Lord Carlile has pleaded in favour of recalling the measures in the foreseeable future<sup>36</sup>.

Since 2001 the British counterterrorism measures, as in other countries, have been considerably reinforced. The attacks on the London underground in July 2005 have made the creation of a counterterrorism policy and legislation a priority. The many documents published by the British government, most of which can be downloaded from the websites of the Home Office or other institutions, however, do not refer to the experiences with combating terrorism in Northern Ireland, save when the article itself concerns Northern Ireland.

### ***British counterterrorism strategy after 2001***

The British counterterrorism strategy is based on the so-called '4 Ps': Prevention, Pursuit, Protection, and Preparedness, as laid down in the Home Office Five Year Strategic Plan 2004-2008, published in July 2004<sup>37</sup>.

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<sup>35</sup> The Guardian, May 22, 2003, Terrorists plotted death of Bevin.

<sup>36</sup> Report on the operation in 2005 of Part VII of the Terrorism Act 2000, Lord Carlile of Berriew.

<sup>37</sup> This information was taken from the Website of the Home Office security.homeoffice.gov.uk. The five-year plan, however, includes a fifth 'P': Public Information. it is not clear why this has been removed. See: Home Office (2004).

*Prevention:* dealing with the causes in the UK or abroad

This includes contributing to solving international conflicts which continue to feed terrorist organisations' recruitment. Prevention also means ensuring that all civilians feel at home in society.

*Pursuit:* prosecuting terrorist organisations

This includes a better understanding of what terrorist organisations are capable of and their intentions and in disrupting their freedom to move within the UK and abroad. This also includes terrorist financing and developing legislation.

*Protection:* protection of the United Kingdom and of critical infrastructure

The protection of special-risk areas must be improved. The efforts are geared towards cooperation with key sectors and locations forming a particular risk. This includes the protection of the Critical National Infrastructure (CNI, see par. 3.6.1).

*Preparedness:* arranging for sound response and recovery

All schemes in place for unforeseen events are thoroughly reviewed by the government. A series of programmes has been used to ensure that the country is adequately prepared in the event of terrorist attacks, including the release of chemical, biological or radioactive substances.

These four fields have been set out in four separate 'discussion papers' for discussion in parliament. The first paper comprises a threat analysis, the second elaborates on the governments strategy (the four 'P's'), the third goes into prevention and prosecution and the fourth goes into preparing for calamities and the protection of critical locations and infrastructure<sup>38</sup>.

Considerable efforts have been made in the field of legislation. The key acts are summarised below (see also par. 3.10).

*Terrorism Act 2000 (TACT)*

Under this act certain terrorist groups are banned which makes it illegal for members of the groups to operate in the United Kingdom (25 international groups; 14 from Northern Ireland). The powers for the police to stop ('stop and search') and detain persons in police custody have been expanded. In addition, new penalisation schemes have been drawn up, such as the incitement of terrorist crimes and teaching and taking terrorist training. Powers included exclusively for Northern Ireland are reviewed every year following an evaluation by the *independent reviewer*, Lord Carlile (see below).

*Anti-Terrorism, Crime and Security Act 2001 (ATCSA)*

This Act aims mostly at countering the financing of terrorism and includes measures in the field of streamlining immigration procedures, securing the infrastructure and expanding the powers of the police. Originally, Section 4 of the Act listed the powers to detain foreign terror suspects without charge. However, these were found to be discriminating in December 2004 by the Law Lords<sup>39</sup> and

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<sup>38</sup> These four discussion papers were taken off the Home Office Website in the summer of 2005. Part of the content is discussed in the section on the policy fields and legislation in Chapter 3.

<sup>39</sup> Lords of Appeal, court of last resort or highest court in the United Kingdom, comprising legally trained members of the House of Lords.

subsequently withdrawn. The Control Orders (see paragraph 3.12) were developed to replace these revoked powers.

*Prevention of Terrorism Act 2005 (under parliamentary discussion)*

This Act arranges mostly the control orders and a longer term of preventive detention.

*Regulation of investigatory powers act 2005 (RIPA)*

This Act covers the technological options the growth of the Internet and the use of encryption offer. The Act provides a basis to investigation techniques which (might) affect privacy. (*intrusive investigative techniques*).

The *independent reviewer*. An interesting phenomenon in English terrorism legislation is the 'independent reviewer', Lord Carlile of Berriew. Lord Carlile has been appointed as single evaluator of acts due for review. He reports on new laws, for example on the degree to which they violate civil rights and freedoms in general or specifically the European Convention for the Protection of Human Rights and Fundamental Freedoms. Lord Carlile's study is about meeting with (usually rather many) representatives from relevant organisation and civilians, which are reported in detail in the appendices to his reports. Lord Carlile has great authority, which relies in part on his political position: as a *Liberal Democrat* he is thought to stand more or less 'above the parties'<sup>40</sup>.

## 2.6 United States

The term terrorism has been used in the United States since the early 20th century, when anarchists were violently resisting the government, for example with a bomb attack on New York's financial district in 1920. The first attempts by the investigation services to gather information on individuals and groups involved in activities targeting the government date back to this period. In 1947 the Direction of Central Intelligence was set up, the immediate forerunner of today's CIA. It started to focus on foreign intelligence, while the FBI aimed at domestic *anti-American* activities. At the time there was aversion against the use of intelligence work against American civilians.

In the nineteen fifties some violent activities took place by Puerto Rican nationalists, who attempted, for example, to kill President Truman. It was in this period that realisation dawned that the increased capacities of television broadcasting, as well as increased attention to major events contributed to a growing scope of terrorist activities. After all, these activities are aimed at invoking fear (in opponents) or bringing across a message (in potential sympathisers).

'Modern' terrorism is associated with aeroplane hijackings by Palestinians in the early nineteen seventies. Following the attack on the Israeli athletes at the Munich Olympic Games, a *Cabinet Commission to Combat Terrorism* was set up in the United States. For the first time realisation grew that international terrorists could hit the United States. Under President Carter the cabinet commission was dissolved while the coordination of antiterrorist policy was grouped under the

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<sup>40</sup> This was commented in an interview with an employee from the Home Office.

*National Security Council*. The first typologies of terrorist activities were drawn up in the mid nineteen seventies, one of which was accepted officially over a period of some 30 years and was drawn up by the National Consultation Committee for standards and targets of criminal law. Incidentally, today's jihad terrorism does not seem to fit any of the typologies used at the time, according to the author of working document 5<sup>41</sup>.

In the government period under President Reagan (1980-1988) combating terrorism was given great priority, particularly in view of its associations with the former Soviet Union. Despite the many initiatives, little changed during that period in the policy of the most important services involved: CIA and FBI. After the Soviet Union fell apart and Libya recognised its accountability for 'Lockerbie', government-supported terrorism seemed to fall. In the nineteen nineties the topic lost priority. Terrorism coordinator of the State Department started to focus more on peaceful coexistence and the creation of cooperation on a world level.

In the mid nineteen nineties the United States was confronted with a new form of domestic terrorism. The bombing of a government building in Oklahoma by Timothy McVeigh proved an expression of a larger undercurrent of right-wing white racists, who use violence to question the authority of the federal government locally, particularly in the field of possession of firearms. Under the Clinton presidency the first Islamist attack on US soil was committed on the WTC (February 1993). Shortly afterwards conspiracies were unveiled to commit attacks on other places in New York that had symbolic value or with a key interest in the infrastructure, such as tunnels and bridges.

The danger of a chemical attack was once again brought to everyone's attention when Sarin gas was used in an attack on the Tokyo underground in 1995. The National Security Council was re-established as coordinating body for combating terrorism. From the NSC the Counterterrorism Security Group (CSG) was set up, which comprised top-ranking officials from the various agencies involved. The director of the CSG was given considerable powers and advised on the budgets for combating terrorism. President Clinton also initiated extensive adaptations to legislation on terrorism. While most of these changes were not implemented until the US Patriot Act that became effective after the September 2001 attacks, terrorism was once again on top of the agenda.

*Jihadi* terrorism expressed itself as had never been seen before: a rather loose multinational network, which (in any case formally) was not supported by any sponsors, so that the old diplomatic measures could no longer be used. In the American perception, the jihadists, including al Qaeda, did not seem to have any clear political targets. While the importance of combating terrorism was recognised, both the Clinton and Bush governments were criticised for proving unable to control the danger posed by Bin Laden c.s.. Naftali and others argued that not much priority had actually been given to combating terrorism<sup>42</sup>. After the September 2001 attacks, combating terrorism in the United States was given highest priority. In 2003 two documents were published that set out the

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<sup>41</sup> The most common typology (of which there were many according to Petrosino, see working document 5, p. 7-8) 1. Non-political terrorism, 2. Quasi terrorism, such as hostage taking by criminals, 3. Limited political terrorism, not targeted at overthrowing governments, 4. State terrorism, 5. Political terrorism, creating fear for political purposes, 6. Narco-terrorism: connection between terrorism and organised drug crime.

<sup>42</sup> See: Crenshaw (2005).

policy. The *National Strategy for Homeland Security*<sup>43</sup> focused mainly on combating terrorism in the US. The *National Strategy for Combating Terrorism* described how threats needed to be identified and dealt with before they reached the United States. The emphasis was on preventing attacks with weapons of mass destruction. The latter document presents four key points of the strategy:

- *Defeat*: attacking leadership, the infrastructure and hiding places of terrorist organisations
- *Deny*: ensuring that terrorists receive no support from or save haven in any country (particularly through effectuation of Resolution 1373 of the Security Council and the 12 antiterrorism treaties.)
- *Diminish*: removing underlying conditions used by terrorists by focusing the international community on risk areas
- *Defend*: protect civilians and interests of the United States by identifying threats and neutralising them as they appear. Reinforcing defence.

#### *Investigation into counterterrorism*

At the University of Maryland the Center of Excellence for Behavioral and Social Research on Terrorism and Counterterrorism is supported by the Department of Homeland Security and other institutions. Other institutions, such as Rand Corporation, carry out studies on behalf of the government. Nevertheless, most research funding goes to studies in the field of technological innovations. For 'monitoring' purposes the State Department publishes the authoritative report 'Patterns of Global Terrorism' every year. In the field of evaluation of counterterrorism efforts, little is yet available, even in the United States.

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<sup>43</sup> The notion of Homeland Security recently received more attention than 'National Security'. Dobbs (2001) explains how the two terms are not synonymous. Homeland Security refers mostly to the own territory and own population, while National Security clearly has an international dimension.

## **3 Description of counterterrorism policies in countries investigated**

### **3.1 Policy aimed at the prevention of radicalisation and recruitment**

Dutch government documents define radicalisation as a process in which people are increasingly prepared to accept the ultimate consequences of their views regarding the change of the existing system and putting it into action, which generates an uncompromising attitude towards those who think differently<sup>44</sup>. The phenomenon of radicalisation of young Muslims in particular (and the role the Internet plays in this) is recognised in all countries investigated. Some reports devote attention to the more general interpretation of the problem. A clear definition is often absent. The United Kingdom in particular seems to devote great policy attention to radicalisation, as does the Netherlands,

#### ***3.1.1 General approach to radicalisation and views of the concept***

##### *Germany*

According to working document 1, it is assumed in Germany that radicalisation of mostly Muslims takes place in mosques, via the Internet and in prisons. According to Albrecht (working document 1), however, there is no study to substantiate these assumptions<sup>45</sup>.

Germany recognises the danger of the emergence of 'parallel societies' that are the result of poor integration, in which radicalisation can perhaps develop more easily<sup>46</sup>.

##### *France*

The working document mentions differences between investigation and security services with respect to the approach to radicalisation amongst Muslims. In the eyes of the authors of the working document on France, the Renseignements Generaux and the DTS intelligence service follow a 'straightforward' approach which implies that the most devout Muslims are probably also the most radical, while the antiterrorism unit UCLAT (see par 3.3.1) states that the people formulating the ideas are not necessarily the people carrying out the actions.

##### *United Kingdom*

The discussion papers to parliament (also refer to par. 2.5) state that with regard to 'prevention', the factors that lead to radicalisation of young Muslims and the appeal they experience from terrorist networks, need to be understood better. According to the discussion papers, these underlying factors should not be ignored (discussion paper 3, also see par. 2.5) in setting up a credible counterterrorism strategy.

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<sup>44</sup> Memorandum 'radicalisering en radicalisme', Kamerstukken II, 2004-2005, 29754, nr 26; AIVD (2005) From Dawa tot Jihad.

<sup>45</sup> The articles compiled in the 'Feindbilder und Radikalisierungsprozesse' ([www.bmi.bund.de](http://www.bmi.bund.de)) attempt to address this point, but turn out to have a rather abstract character.

<sup>46</sup> For the Netherlands, see AIVD (2004) Van Dawa tot Jihad.

The Home Office operates a 'general theory' on the radicalisation process, based on which attempts are made to draw conclusions regarding interventions that would be useful in combating the process. Based on experience, the starting point is that there is no such thing as a 'radicalisation career' that would apply to all or even most cases of radicalising Muslim youths. Three types of factors are being distinguished that influence the process of radicalisation:

- structural factors, such as social-economic inequality;
- motivational factors, for example the notion that foreign policy inspires attacks on Muslims or that Muslims are affected disproportionately by certain measures (such as the 'stop and search'); as well as notions such as 'the need for a new Caliphate';
- environmental factors, including mosques and prisons where people get in touch with radicals and recruiters, although it is now recognized that most recent cases involved non-localised networks, i.e. 'virtual' networks established via the Internet).

These factors are addressed by a range of measures.

For example, the Foreign Office operates in the international arena to help solve international sources of tension. A programme of the British Council ('Connecting Futures' in the UK and the Middle East) and support of the peace process in Israel/Palestine are regarded as examples.

In addition, efforts are made to marginalize extremists within their community. The development of legislation against inciting hatred on religious grounds and against discrimination by authorities and service providers are also mentioned. 'The process of radicalisation and recruitment should be better understood and focal points in this process should be tackled. The government recognises that policies directed at the current generation of terrorists can affect the perceptions of young people exposed to terrorists' propaganda'<sup>47</sup>.

The British government has appointed seven *working groups* to develop ideas on combating radicalisation and extremism and promoting integration. The groups focused on the following issues: radicalisation, youngsters, local initiatives, women, Imams, Islamic education, and community security. In September 2005 a number of proposals were made by these working groups as a contribution to the counterterrorism policy. One of the proposals was the set-up of a National Advisory Council of Imams and Mosques. In addition, a national forum against extremism and Islamophobia was proposed. A 'road show' of influential and popular religious experts would need to set out the concept of 'Islam in the west' and condemn extremism.

Concerns for the relationships with the Muslim communities have been extensively documented in reports such as 'Terrorism and Community Relations'<sup>48</sup> and the confidential report *Young Muslims and Extremism*, which was leaked through the Times (also see par. 2.5).

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<sup>47</sup> Discussion paper 3, February 2005.

<sup>48</sup> Home Affairs Committee (HAC, 2005).

An attempt is being made to implement these insights into the various policy fields. For example, a strategy has been developed for the harbour police, focusing on four key aspects:

- 1 Critical assessment of information and intelligence used by officials to select people for inspection
- 2 A review of diversity training aimed at dealing with minorities, which is followed by the harbour police
- 3 'Islamic awareness briefing' and other training for officers in the harbours
- 4 Promoting the involvement of the community in activities to enhance the awareness of diversity in officials.

### *United States*

The extent of the actual approach to radicalisation in the United States is determined by the American Constitution. The 'first amendment' emphasises the freedom of speech. Unlike in a number of European countries, persons voicing racist comments cannot be dealt with. The support of Jihad either in writing or in speech is difficult to tackle directly. Registration of people involved in intelligence services databases is possible, however.

Nevertheless, the Bush government has proclaimed a *war on ideas* that needs to be won.

According to working document 5 the government targets mostly Muslim communities in the Middle East and elsewhere, and to a lesser degree the Muslim community in the United States itself. Important in this is that most members of the American Muslim community are in a relatively affluent position compared with, for example, most Muslims the Middle East and Africa (and in West-European countries), where unemployment is high and integration poor<sup>49</sup>.

### **3.1.2 Foundation of Islamic counsels**

#### *Germany*

Working document 1 comments that the Islamic Council, which has been in existence for some time, plays neither a formal, nor an informal role in the prevention of radicalisation. The Council was, however, invited to share its comments on new legislation in this field.

#### *France*

France has an Islamic council (Conseil Français du Culte Musulman, CFCM), which liaises with regional Muslim councils. The council was founded in response to the need to promote a well-organised 'moderate' Islam, and to combat Islamism. For this purpose a dialogue was initiated with the Muslim community, which resulted in the foundation of the council, aimed at minimising the political scope for extremism. The Muslim council is involved in a broad range of issues that concern Muslims, including political relations, the construction of mosques, control of *halal* meat, Imam training and the education of spiritual councillors in the army and prisons. The latter is particularly important because many of the terrorists involved in bomb attacks were shown to have been recruited in prison.

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<sup>49</sup> Petrosino (working document 5) reports that 66% of Muslims in the United States have an annual income of \$60,000 or more (note 65). The connection made between unemployment and lack of perspectives on the one hand and the emergence of extremist ideologies and terrorist movements in the other, is a subject outside the scope of this report, that deserves another study.

The general objective is to promote the independence of the French Muslim communities from foreign governments (such as Saudi Arabia, Algeria and Morocco). All key Muslim organisations sit on the council and it is recognised as representing the entire Muslim community. The French government distances itself from Huntington's idea of the 'clash of civilisations' and aims to make a clear distinction between Islam and extremists, according to Bigo (working document 2). Important in connection with the fight against radicalisation is the 'Laïcité', secularism which attaches great importance to the separation of church and state. While the ban on wearing visible signs of religion (the 'headscarves act') is mostly a 'republican issue' according to working document 2, it has complicated relations with the Muslim community while it feeds extremists in their propaganda against the French government. Measures aimed at integration, such as the foundation of the Muslim council, are being implemented alongside repressive measures, which are aimed mostly at localising networks and ensuring that intentions to carry out attacks cannot be realised. Due to measures like these, social and religious Islamic issues after 2001 have been linked to (the combat against) terrorism. The working document on France is critical about linking the 'fight against radicalisation and terrorism' with a range of political and policy issues that have to do with the Muslim community, such as integration, social frustration, problems with identity, etcetera. This link is sometimes made to 'sell' the policy to the public, the French researchers say, something they believe makes this connection even more dangerous as it ignores the complexity of the issue.

### *Italy*

An *Islamic Council* was set up in Italy to promote a moderate Islam. This measure is regarded as 'complementary' to other CT legislation. The council is under protection ('aegis') of the Ministry of Foreign Affairs and comprises experienced and authoritative people from the Muslim community. It is an advisory body aimed at entering an open dialogue with the community. Given the presence of a growing Muslim community it is deemed important to establish interdependency between policies in the fields of security, social and civil rights and integration, aimed at increased social cohesion. The aim is to involve the Muslim community in the democratic constitutional state.

### *Spain*

The Spanish Islamic Commission was set up by the Spanish government as early as 1992 to represent the Muslim community which counted some 1 million people. The commission has a legal basis. The Spanish Muslims are registered in the *Registry of Religious Entities* for this purpose.

Two federations are represented in the Islamic commission, namely the Union of Spanish Islamic communities and the Spanish Federation of Islamic Entities (FEERI). Both federations comprise numerous groups. The Islamic commission plays a role in a number of key areas, such as the status of imams, the legal status of Islamic marriages, spiritual support in public institutes and education in Islam in public schools.

Mosques and other places where Muslims gather but who do not participate in the Islamic Commission, are put under pressure by the police to ensure they register. If they fail to do so, they may be closed.

The Islamic Council deliberately focuses on playing a role in prevention radicalisation within the Muslim community. For example, a Fatwa was

pronounced that terrorism creates a false image of Islam. According to the Quran it will lead to a disruption of the relationships with non-Muslims in the countries where Muslims are a minority. The governments and press were requested to refer from using the terms 'Islam' and 'Islamic' in combination with the term 'terrorism' in the same sentence. The Commission has thus intended to place the terrorists outside Islam.

#### *United Kingdom*

A *National Advisory Council of Imams and Mosques* has been set up in the United Kingdom. Its aim is to prevent mosques from being used for radicalisation, reducing dependence on imams from abroad, enhancing cohesion in communities and promoting the leadership qualities of imams.

### **3.1.3 Monitoring the impact of counterterrorism policy on Muslim communities**

#### *United Kingdom*

The possible impact of the counterterrorism policy on the Muslim communities is attracting interest, as appeared from the interviews with the Home Office (see par 1.2.1). What needs to be avoided is that the policy is interpreted as being discriminatory. This plays a role particularly in high-profile interference actions such the 'stop and search' actions by the police. These have been criticised by Muslim organisations for mainly targeting Muslims. For this reason, it was decided to collect data on stop-and-search activities, to obtain an insight into the percentages of stop-and-search activities in respect of population groups. These *Community Impact Assessments* are carried out by the police itself<sup>50</sup>. Confidential reports about the sentiments in the Muslim community in respect of government measures are issued monthly.

Concerns for the relationships with the Muslim community appears from an April 2004 report which was leaked through The Times in July 2005, entitled 'Young Muslims and Extremism', and associated letters and other documents, analysing radicalisation amongst Muslim youths and announcing further studies. Strong emphasis is also laid on improving contacts with the community. In 2005 a number of working groups were set up to put this into action, which yielded dozens of policy recommendations. The emphasis in these recommendations is on reinforcing the powers of the Muslim community itself to fight extremism. The Home Office was happy to receive the recommendations in November 2005. The outcome of the recommendations cannot be verified as yet.

In a memorandum to the Parliament of June 2004<sup>51</sup> the Home Office announced that cooperation is being sought with the Muslim community, which has an important role to play in the fight against terrorism. Important in this is the Muslim Contact Unit liaising with the Metropolitan Police Special Branch. By developing good contacts with people from the community it aims to fight

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<sup>50</sup> These must be regarded in the tradition of 'impact assessments' in various fields, such as 'regulatory impact assessments' which must show if the introduction of certain regulations would impact on the inequality between population groups ('race and inequality').

<sup>51</sup> <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/886/886we02.htm> download 16-1-06.

extremism (for example people involved in mosques where radicals attempt to roll out activities). Consultations with the British Muslim Board are also taking place.

Within this framework meetings were arranged with representatives of the Muslim community which discussed the discussion memorandum of the Home Office, entitled 'Counter-terrorism Powers: Reconciling Security and Liberty in an Open Society' of February 2004.

Minority communities are considered partners who need to be involved and communicated with. Concerns have arisen over the use of some powers assigned to the police within the framework of counterterrorism, such as the 'stop and search' measures affecting people and vehicles. The reasonable use of these powers is monitored by the 'Stop and Search Action Team' (SSAT), which receives its information from the community.

The relevance of maintaining good relations with the immigrant communities in fighting terrorism is highlighted in the report 'Terrorism and Community Relations' by the Home Affairs Committee of the House of Commons dated April 2005.

#### *Spain*

'Working on mutual understanding' is an issue in Spanish policy. Besides government information and information to prevent terrorism, there are initiatives to disseminate knowledge on topics related to Islam, promoted by the government. The Spanish Open University (UNED) has set up a course on Islamic history and culture in cooperation with one of the Spanish Muslim Umbrella organisations (FEERI) and with the 'World Islamic Call Society'. Incidentally, the working document does not indicate how these activities aim to fight radicalisation. It is said that the UNED has an important social influence.

#### ***3.1.4 Abolition of privileges for religious reasons***

*Germany*: abolition of the 'religion privilege'. Until recently, extremist groups could escape this ban by presenting themselves as purely religious or ideological organisations ('Association Act', English translation author working document 1).

#### ***3.1.5 Combating radicalisation in Muslim countries***

##### *United States*

The American viewpoint is based on the idea that extremism and radicalisation can grow in the poor conditions in which many Muslims are living, particularly in the Middle East. The theory behind the American approach to radicalisation is that humanitarian aid will help improve conditions on site, diminishing the breeding ground for radicalisation. Employment deprives jihadi groups from their reservoir of young unemployed from which they can recruit their people. Education contributes to keeping racist and hateful notions at bay. Within the framework of programmes such as the Middle East Partnership Initiative, Millennium Challenge Account and Trade for African Development and Enterprise and the Andean Regional Initiative, millions of dollars have been invested accordingly. According to

working document 5 critics have argued that many of the terrorists now known are anything but poor<sup>52</sup>.

World Muslim Outreach is a classified programme which the United States uses to try to stem the emergence of radicalism and anti-Americanism in the Islamic world by promoting a moderate Islam. According to an article in US News this is done by sponsoring radio and TV programmes, Islamic education and political think tanks. Critics have questioned the compatibility of these initiatives with the separation of church and state<sup>53</sup>.

### **3.2 Policy aimed at informing the general public**

#### *Germany, France, Italy*

The working documents drawn up for this project and for these countries contain no information on an explicit policy in the field of informing the public on terrorism. The researchers visited the Websites of the Ministries of Foreign Affairs of the countries in question.

The German Ministry of Foreign Affairs ([www.bmi.bund.de](http://www.bmi.bund.de)) contains a page with instructions to the population on how to act in the event of 'außergewöhnlichen Gefahren- und Schadenslagen', including environmental and industrial disasters, as well as the dangers of international terrorism.

The security pages of the Ministry of Foreign Affairs of France ([http://www.interieur.gouv.fr/rubriques/b/b1\\_votre\\_secu](http://www.interieur.gouv.fr/rubriques/b/b1_votre_secu)) nor the site of the Ministry in Italy ([www.interno.it](http://www.interno.it)) contain separate sections with advice and information to the public on terrorism.

#### *Spain*

According to the working document on Spain not much is being done here on informing the general public on counterterrorism policy, in the sense of explaining the considerations underlying the policy. The Ministry of Foreign Affairs has a Website where civilians are asked to cooperate in the fight against 'terrorism and organised crime'. The Guardia Civil also has a Website, with 'ten commandments' for the cooperation between civilians and the government in fighting terrorism. The emphasis lies particularly on the importance of reporting to the authorities any activities that could be terrorism-related.

Working document 4 lists over ten Websites of organisations of victims of terrorism. The organisations are assigned important roles in dealing with actual crises.

#### *United Kingdom*

The policy is that information to the general public is given '...without providing a running commentary on our assessment of threat useful to terrorists themselves and or needlessly alarming people with unspecified threats.'

A leaflet was distributed door to door entitled 'Preparing for emergencies'. A Website of the same name was set up for information to the public ([www.pfe.gov.uk](http://www.pfe.gov.uk)).

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<sup>52</sup> Working document 5 refers to Constantino (2005).

<sup>53</sup> Kaplan (2005). Also see Washington Post 17 April 2005: US Outreach to Islamic World gets slow start.

In the event of calamities a News Coordination Centre (NCC) will be set up to provide information to the public, interested parties and the media. The information must be 'clear, consistent, timely and accurate'. A communication protocol lays down arrangements with representatives of all key media. The *National Media Emergency Forum* has been discussing communication issues since 1996 with representatives of the media and the government, local authorities and other public sector services.

Literature refers to attempts by the government in the Northern Irish 'Troubles' to get some grip on media information on the British government and the paramilitary opponents and how they acted<sup>54</sup>. It is not clear to what extent explicit lessons have been learnt from these experiences that could be applied to the current situation.

The guidelines for crisis management (see also par. 3.6) also include that the media need to play a clear role in emergency plans.

#### *United States*

In the United States informing the general public serves several objects. First and foremost, the information aims to encourage civilians to take steps to promote their own security. Secondly, a 'force multiplying' effect is expected, with civilians helping the government signalling suspect people or events.

The Homeland Security Advisory System, which distinguishes five threat levels, does not aim primarily at the general public but mostly at the government and national and local authorities. However, it pops up instantly when visiting the website [www.dhs.gov](http://www.dhs.gov) of the Department of Homeland Security (DHS). A problem that occurs in the United States according to working document 5 is that there are different alerting systems. In addition to the DHS alarm system, there are systems for separate states and large cities, such as New York. These systems sometimes issue conflicting warnings. Another possible problem is that alarms given are based on information which is not instantly recognisable as serious or a hoax. On the one hand the government may not be taken seriously if threats always pass unrealised, on the other hand terrorists could use the systems to create a high level of fear amongst the population.

In addition to alerting the population, the government is making efforts to inform specific segments of the population and businesses. Travel advice issued by the Ministry of Foreign Affairs, too, is sometimes based on information on terrorist threats.

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<sup>54</sup> Part of the literature on the Northern Ireland conflict is rather politicised, in the sense that the authors (seem to) take sides in the conflict. For an overview of the media war, the following may be of interest: Coogan (1996) Chapter 11, *The Media War*.

### 3.3 Policy aimed at institutional developments and set-up of coordination centres

New institutions have been set up in most countries that aim to coordinate the efforts in the field of counterterrorism.

#### *Germany*

Various initiatives have been implemented in Germany to come to a better coordination and exchange between investigation services in the federal states. Attention in this is also targeted at the different information systems that have trouble communicating. The principle that the police and domestic security remains the responsibility of the federal states is not a point for discussion, however.

In Germany the cooperation between the services is very much aimed at information sharing (see also par. 3.4.1).

#### *France*

The French legal system is characterised by a clear centralisation of the infrastructure for terrorism cases. Coordination has been assigned to the Paris court, which has absolute control over the (legal) fight against terrorism. Within the Paris court a division has been set up comprising public prosecutors and investigation judges<sup>55</sup>, the so-called 14<sup>th</sup> 'antiterrorism' Division of the Paris Prosecution Offices, also known as SCLAT (central service). This division focuses solely on terrorism cases. The Ministry of Justice comprises a *Bureau de la lutte contre la criminalité organisée, le terrorisme et le blanchiment* which prepares policy routes. Not only the legal system combating terrorism has been centralised, the police system has been centralised too. The emphasis in the latter lies on integral operational coordination combating terrorism. At the political level the Conseil de Sécurité Intérieur (CSI) was founded in 1986, in which the ministers of Justice, Foreign Affairs, the Interior, Overseas Territories and Defence are represented and is coordinated by the Prime Minister. The council incorporates a coordinating official liaison committee (CILAT), in which the security services are also represented. One of the services represented in CILAT is the UCLAT (Unité de Coordination de la Lutte Anti-Terroriste). This unit represents the link between the police and the intelligence service within the framework of the fight against terrorism. The UCLAT commission combines three elements: intelligence work, prevention of attacks and repression. UCLAT distributes information across the relevant parties and also liaises with a number of European countries, including Germany, Italy, Spain, the United Kingdom, Belgium and the Netherlands. In order to keep efforts under control and easy to supervise, the 'Vigipirate' plan was developed, a blueprint for the state machinery to take control of national and public security, involving all police and army units. The Vigipirate plan has been in constant operation since 1991, although measures have always been adjusted to suit topical developments. A review was held place in 2003 when parts were considered outdated.

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<sup>55</sup> Comparable to the Dutch investigating judge.

### *Italy*

The Act of 2005 (no. 155) provides, amongst other things, for the set-up of a counterterrorism unit by the Ministry of Foreign Affairs. This unit is to have a 'multi-agency' character and therefore comprises experts from a range of services.

### *Spain*

In Spain, a United Commando (CEMU) for the investigation services Policia and Guardia Civil was set up, which operates at the same level as a directorate-general. The tasks of this commando are to:

- set up special units for the coordination of the fight against terrorism and organised crime, investigation and intelligence work, police interventions and bomb disposal activities,
- set up and maintain shared databases for the two investigation services
- promote the set-up of cooperation efforts in technical and forensic policing,
- support a public centre for security research for investigation services,
- promote fast access to police services,
- promote international cooperation,
- promote any other targets defined by the CEMU.

In addition, a National Centre for Antiterrorist Coordination (CNCA) was set up by a Minister Council decree dated May 2004. This body operates under CEMU and comprises members of the police, the Guardia Civil and the CNI (National Intelligence Centre). The CNCA has no operational tasks, but is involved particularly in receiving, processing and analysing the flow of strategic information received. Based on the information reports are made and used for the analysis of the terrorist threat for Spain on a permanent basis.

The National Intelligence Centre referred to above was given a legal foundation in 2002<sup>56</sup>. At the regional level the fight against terrorism is coordinated by the Junta the Seguridad, in which both the autonomous regions and the central government are represented.

### *United States*

The United States saw the establishment of the Department of Homeland Security<sup>57</sup>. Since the nineteen forties the United States has been dealing with poor cooperation and inadequate information exchange between the different services involved in counterterrorism (particularly the CIA and the FBI). Following the plane hijack and hostage taking of the Israeli athletes in Munich the National Security Council (NSC) was reinforced in the nineteen seventies to coordinate all counterterrorism efforts. It was to remain the central institute for a long time, even if the FBI (domestic terrorism) and the State Department (foreign terrorism) had considerable influence. Under Clinton a special Counterterrorism Security Group (CSG) was founded within the NSC, seating high officials of all the main institutions involved. The CSG director was given the title of 'National Coordinator'

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<sup>56</sup> The previous intelligence service CESID had been discontinued as part of an operation to remove a number of facilities that were in violation of the Constitution (working document 4).

<sup>57</sup> The term 'homeland security' has a slightly different meaning from 'national security', which refers to global threats to American citizens and interests. The National Strategy for Homeland Security defines Homeland Security as "a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur." Homeland security includes federal, state, and local governments, the private sector and individual citizens.  
<http://www.armscontrolcenter.org/terrorism/homeland%20security/>.

and an important advisory vote. Under Bush the name changed to 'NSC Principals Committee on Counterterrorism and National Preparedness'.

After 11 September 2001 a Homeland Security Council was set up as an advisory body to the president. Shortly afterwards the Department of Homeland Security was set up, to cover all services dealing with 'homeland security'. The mission of the DHS is aimed mostly at the prevention of terrorist attacks, reducing the vulnerability to, and minimising the damage caused by, attacks. It meant the biggest reorganisation of government in history, grouping 22 institutions and 180,000 people in a single organisation.

In the United States many billions of dollars are spent on discretionary funds for states and local governments within the framework of Homeland Security.

In a testimony to the Senate Committee, the Director of the Rand Corporation for Homeland Security criticised the project on a number of points<sup>58</sup>. For example, Homeland Security has not been clearly defined, nor is it clear if it is to include major environmental disasters. He also pointed at a lack of performance indicators and the inability to indicate which measures are effective and which are not. Working document 5 for the United States also points at organisational problems that occurred in individual agencies, particularly the FBI. Specific changes have been introduced in the command structure at the Ministry of Defence.

Working document 5 also addresses the first evaluation of the new coordination structures in the United States. After the events of 9/11, a number of management irregularities came to light across a range of fields, including aviation, intelligence and the culture and bureaucracy of the CIA and the FBI. Many steps have been taken to fight the threat of terrorism. All of this has led to an enormous challenge in the field of coordination. What must be avoided is that work is being repeated, while at the same time some fields receive too little attention and resources are used inappropriately. Moreover, it is becoming increasingly harder to establish the effect of all of these efforts. Meanwhile, a RAND study has shown that the interaction within the various counterterrorism authorities is complex and that responsibilities are not always clearly allocated. Authorities are asked to cooperate while they do not share traditions. The abolition of the former tight separation between domestic and foreign efforts in combating terrorism yields specific problems. Various services covered by the DHS cooperate poorly and sometimes clash with each other (particularly Customs and the Immigration Services)<sup>59</sup>.

### **3.4 Intelligence activities**

As the United States report describes, the government started to collect information on individuals and groups possibly looking to undermine this government from the first attacks (in the United States by anarchists in the early twentieth century). The idea of domestic intelligence services was born, although there was resistance (also in the United States) against the use of intelligence work focusing on American nationals<sup>60</sup>.

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<sup>58</sup> Working document 5 refers to Wermouth (2005).

<sup>59</sup> The first reports in the field of coordination (discussed by Talhelm in the Boston Globe) are sobering, says Petrosino, author of working document 5. Nevertheless, the State Department for example reported that coordination efforts were going well before 9/11. According to the author, what needs to be done is critically examining these types of reports.

<sup>60</sup> In the Netherlands the 'revolutionary threat' also played an important role in the establishment of the predecessors of the AIVD (Engelen, 1995).

### ***3.4.1 Extension of powers of investigation and intelligence services***

#### *Germany*

Intelligence services in Germany aim at people who undermine the 'spirit of mutual cultural understanding', which also includes non-violent radicals. Its view is that this form of prevention must also be implemented outside Germany. New powers have been created to be able to demand financial institutions, telephone agencies and aviation companies to disclose information on individuals, which they have accumulated on account of their work. These powers are considered part of the policing duties. Domestic activities of secret services are a controversial subject in Germany in light of the Nazi-period in its history. A strict distinction has therefore been made between 'police' powers to gather information, and the powers of the intelligence service which are aimed more at structures.

The Bundeskriminalamt Act (BKA) has been amended to enable the federal agency to gather information from any authority in Germany to fill gaps in investigations, even if local federal state authorities have already done so. The BKA has thus been upgraded to a 'central bureau' for intelligence.

Another amendment (68.3 Social Code) provides for the use of even the most privacy-sensitive data for 'dragnet research' (Rasterfahndung), to identify potential terrorists<sup>61</sup> based on profiling and information reduction techniques (datamining). The dragnet research also relies on the use of the central register of aliens, which was first legally founded in 1994 (Ausländerzentralregister). A controversial aspect is that it specifies the religion of the individuals registered herein, although individuals to be included in the register are not obliged to answer this question. This register poses a problem from a constitutional point of view as it makes for a distinction between foreign and German nationals in the investigation, according to working document 1. A point to be considered is that asylum procedures often contain highly sensitive information in relation to the country of origin. An objection submitted in 1995 was rejected, however.

The second counterterrorism package (see par. 2.1) which provides for regulations, has inspired serious criticism from both data protection experts and constitutional specialists. A problem found in all data coupling and dragnet research powers, is that a wealth of data is generated that is almost impossible to analyse.

The third German package of antiterrorism legislation was put together after the London attacks in July 2005. This package includes new preventive powers for the BKA, also under pressure of the then opposition in parliament. It also provides for the further development of databases for combating terrorism (particularly longer terms for retention of communication data), the introduction of biometric passports and the further development of the exchange of information between the various authorities. This package came under serious criticism from 'green' and SPD experts, not only for the assumed violation of privacy, but also because it raises the question if the financial investment is justified considering the increase in security to be realised.

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<sup>61</sup> Incidentally, this method was already used in the nineteen seventies to identify apartments and other locations used by RAF members.

### *France*

French counterterrorism used to rely heavily on *human intelligence*. Recently a shift took place from information gathered by informers and agents of the intelligence services to information collected using technical means (the working document does not provide any details).

### *Italy*

Italy monitors places where Islamists gather ('hot spots'), such as particular mosques. The aim is to nip the emergence of Islamic cells in the bud.

### *Spain*

With regard to intelligence services a government commission for Intelligence Affairs was set up in Spain (by Act of 2002). It aims to coordinate the intelligence services activities and to ensure a single 'intelligence community' in the country. Besides the central CNI the various investigation services each have their own intelligence services. The government commission comprises ministers and secretaries of state. Their task is to determine the annual targets for the CNI, as well as evaluation of the activities and their coordination.

### **3.4.2 Centralisation and intelligence sharing**

Attempts to improve the information exchange are undertaken in a European context (Action Plan Combating Terrorism) between the services of the Member States (police, justice, customs and intelligence and security services) mutually and with the four EU services involved:

- Europol
- Eurojust
- European Agency for the Management of Operational Cooperation at the External Borders of the Member states of the European Union
- SitCen (Situation Center, a new bureau that prepares analyses based on information).

The bodies are cooperating on *strategic information*, resulting in threat analyses, initially on radicalisation and recruitment. A report on this has since been published. As regards *operational information* Europol recently reported that the *analysis file* it keeps is being used in 21 studies in various Member States. Eurojust has reported that while the information flows are increasing, they do not meet the requirements set by the Council Decision of 19 December 2002. This would be looked into under the UK presidency.

With regard to *access to databases* a study was carried out at the end of 2005 into the progress made with regard to six types of information contained in databases. As far as known, no report has yet been published.

### *Germany*

A 'Gemeinsames Terrorismusabwehrzentrum' (GTAZ) was set up in December 2004, a collaboration between Bundeskriminalamt (BKA, National Criminal Investigation Department) and Bundesverfassungsschutz (BverfSch, intelligence and security service). The centre was set up as security responsibilities were very much decentralised, which could lead to confusion amongst the various services, and frustrate police efforts in the fight against terrorism. It is common knowledge

that police and security services do not always cooperate well, the result of a certain degree of competition between the two. The aim was to improve the coordination between the various services rather than set up 'almighty' new structures.

The GTAZ aims to ensure a very rapid exchange of information and provide targeted threat analyses which should lead to agreement on operational measures.

The GTAZ tasks include:

- Daily briefings, involving representatives of all relevant services,
- Frequent threat analyses, tailored to scenario reviews and answering operational questions,
- Operational exchange of information,
- Case evaluations, aimed at specific aspects such as false IDs and weapons and munitions,
- Structural analyses aimed at longer-term aspects, such as training camps and travel movements by terrorists,
- Getting an insight into the potential of Islamist terrorists,
- Gathering other sources, for example by using experts on Islam
- Tasks that relate to the Aliens Act: search for grounds to remove suspect persons from the country.

The GTAZ will be expanded in 2006 to include international experts in special projects. According to the working document the first results of the centre are favourable. More studies are carried out and extremists are monitored more closely.

The head of the BKA recently suggested that the information systems of the police and the intelligence services are to be combined under the GTAZ umbrella. According to the working document by German colleagues this raises the question if this does not equal the full abolishment of the distinction between information gathered by the police and the intelligence services.

#### *France*

France created the CRI (Conseil du Renseignement Intérieur, Council for Interior Information) which aims to ensure an optimal relay of information between the various services. The working document drafted by the French researchers describes how the exchange of information between intelligence and investigation services faces obstacles that are the result of cultural differences. The investigation services are said not to be able to deal with information whose origins are unknown.

#### *United Kingdom*

The cooperation between the British intelligence services is set out in the document entitled 'National Intelligence Machinery'<sup>62</sup>. The United Kingdom has three intelligence and security services known as 'the Agencies': The Secret Intelligence Service (better known as MI6), the Security Service (MI5) and the Government Communications Headquarters, plus the Defence Intelligence Staff (DIS) and the Joint Terrorism Analysis Centre (JTAC).

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<sup>62</sup> See Cabinet Office: National Intelligence Machinery ([www.mi5.gov.uk/output/Page151.html](http://www.mi5.gov.uk/output/Page151.html)).

The JTAC is a multi-agency unit, set up in 2003 for the coordination of intelligence work on terrorism. It employs people from all agencies referred to above. The purpose of JTAC is the integration of information on the activities, intentions and capacities of terrorists posing a threat to the United Kingdom and befriended countries across the world. The effectiveness of the work carried out by the JTAC is being monitored by an Oversight Board chaired by the Cabinet Office.

### *United States*

Intelligence services in the United States came under serious criticism after 9/11, after it became clear that both the FBI and the CIA had information on some of the hijackers, but had failed to share this information. Since then various initiatives have been taken to improve the combination and exchange of information across the various authorities involved. This started with the establishment by the president of the Terrorism Threat Integration Center (TTIC), aimed at linking all information gathered by the various authorities in threat analyses. A national database of terrorism suspects was to be set up. The TTIC was given unconditional access to all information available to the government. Moreover, TTIC was to supervise the counterterrorism efforts of the authorities involved.

In 2004 the TTIC was replaced by the National Counterterrorism Center (NCTC). NCTC's task is: "integrating and analysing all intelligence pertaining to terrorism and counterterrorism (CT) and to conduct strategic operational planning by integrating all instruments of national power"<sup>63</sup>. A key task of the NCTC is the integration of the 'watch lists' containing individuals suspected of terrorism, including the TIPOFF list of the State Department, which contains information on more than 100,000 individuals collected by US consulates across the world. The National Counterterrorism Center in the United States aims to prevent attacks by taking a team approach to 'thinking as a terrorist', an exercise that is referred to as 'red teaming'. A database of attacks worldwide is also kept<sup>64</sup>.

According to working document 5 written by American researcher Petrosino, the integration of intelligence work will continue to present a key challenge for the United States. Several large authorities are working on intelligence on terrorism, such as the National Security Center, the Director of Central Intelligence (DCI), the DHS, FBI, CIA, the State Department and the Ministry of Defence. In addition, there are intelligence services in national authorities and at the federal, regional and urban level. The advantage recognised is that information from a wide range of sources can be brought together to present the very best 'product'. However, centralisation of information also comprises the danger of creating conflicting information and such abundance of information that analysis becomes problematic, according to working document 5.

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<sup>63</sup> See [www.nctc.gov](http://www.nctc.gov) (download 3 April '06).

<sup>64</sup> See <http://wits.nctc.gov>.

## **3.5 International cooperation**

### **3.5.1 *The UN and terrorism***

There are now 12 UN treaties on terrorism. From the nineteen nineties the Clinton government started to increase pressure to ensure all international treaties were signed before the year 2000. This recently applied to resolution 1373, which specifies that terrorists are denied a 'safe haven' anywhere and no longer receive government support. For this purpose, the UN and the EU are listing terrorists and terrorist organisations (also see par. 3.8). These resolutions are supported by the countries involved in this study.

The UN includes a Counterterrorism Committee (CTC), which was set up shortly after the September 2001 attacks. Its task is to monitor developments in the field of terrorism.

### **3.5.2 *G8***

Within the G8 connection there is a Counterterrorism Action Group, which includes involvement from all countries targeted by this report, save for Spain, which is not a member of G8<sup>65</sup>. This group aims at supporting risk countries in combating terrorism and the distribution or proliferation of weapons of mass destruction. The Global Partnership Against the Spread of Weapons and Materials of Mass Destruction was drawn up for this purpose in 2002. It also involves other countries, including the Netherlands.

Working document 3 also refers to a 'Roma group' within the framework of the G8, which aims at developing security procedures for international organisations.

### **3.5.3 *EU***

The EU adopted a framework decree in 2002 on the fight against terrorism. A large number of measures were taken, and the Member States have committed to implement these in their national legislation within the context of their national traditions. There is a European strategy and a European Plan of Action for Fighting Terrorism, which was updated after the 2004 attacks in Madrid, and which sets out in detail numerous actions in the field of prevention, protection of critical infrastructure, combating terrorism funding, information exchange, investigation and prosecution, as well as crisis management and disaster control. Other framework decrees were also established for the European arrest warrant (EAW), the set-up of Eurojust and a 'joint action' on tracing means that can be used in terrorist acts combating money laundering.

The Act the EAW was to introduce in Germany was found unlawful by the Constitutional Court in July. (see also chapter 3.10.1 on legislation.)

Working document 2 (Bigo, France) reports on the development of European collaboration on terrorism that dates back many years (1971, called the Bern Club). Before 11 September there had been a number of important successes in the fight against the GSPC<sup>66</sup> (cooperation between Belgium, Germany, Italy, Spain, UK and France) and the ETA (France and Spain).

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<sup>65</sup> The G8 started in 1975 as G6. Canada (1976) and Russia (1998) joined later. The G8 currently comprises the United States, Canada, Great Britain, France, Germany, Italy, Japan and Russia. The group may be extended to include China, India and possibly Brazil (Wikipedia).

<sup>66</sup> Group Salafiste pour la Prédication et le Combat.

After the 2001 events, the EU appointed a coordinator for counterterrorism. Dutch former state secretary for the Interior and Kingdom Relations, Gijs de Vries, took the post in March 2004.

### ***3.5.5 Council of Europe***

The Council of Europe has initiated a treaty, the Convention for the Prevention of Terrorism, which was signed by all Member States. The Council of Europe commissioned a number of publications for the working groups working on terrorism-related topics, such as inciting terrorism and crown witness schemes<sup>67</sup>.

### ***3.5.6 Organisation for Security and Cooperation in Europe (OSCE)***

All countries studied are involved in the OSCE. For counterterrorism issues, the OSCE is involved in, amongst other things, initiatives focused on police training and border control. Moreover, the OSCE operates a broad security scope, which includes social, economic and political conditions subject to which terrorist organisations could receive support<sup>68</sup>.

### ***3.5.7 Euromed***

Working document 4 refers to a conference of European and Mediterranean countries (including the Palestinian Authority and Israel) and a number of countries with an observatory role. A 'Code of Behaviour on Counterterrorism' was adopted, which condemns terrorism in all its forms.

### ***3.5.8 Asia-Europe Meeting (ASEM)***

ASEM is an informal process of dialogue and cooperation which was first founded in 1996. It comprises all EU Member States, the European Commission and thirteen Asian countries (Brunei, Burma/Myanmar, China, Cambodia, Indonesia, Japan, South Korea, Malaysia, Laos, the Philippines, Singapore, Thailand and Vietnam), all participants in the process<sup>69</sup>.

It discusses political, economic and cultural subjects, with the aim of reinforcing relationships between the regions.

From a political point of view, importance is attached to a multilateral approach to problems in the field of international security, such as terrorism.

### ***3.5.9 NATO***

Italy is in charge of the technical support to 'third countries' in securing airports in the 'western Balkan'. It also participates in the operation Active Endeavor against terrorist influences in the Mediterranean.

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<sup>67</sup> Council of Europe, "Apology du terrorism and "incitement to terrorism", Council of Europe Publishing, 2004; The protection of witnesses and collaborators of justice, Council of Europe Publishing, 2005.

<sup>68</sup> See also: [www.osce.org](http://www.osce.org).

<sup>69</sup> See also: [www.asem6.fi/what\\_is\\_asem/asem\\_in\\_brief/en\\_GB/asem\\_in\\_brief/](http://www.asem6.fi/what_is_asem/asem_in_brief/en_GB/asem_in_brief/).

### ***3.5.10 Joint UK/US contact group on Homeland Security***

This contact group was founded in June 2003 by the then Home Secretary David Blunkett together with Tom Ridge, the Minister of Homeland Security of the United States. The contact group aims to share expertise and 'good practice' on communal security issues such as border protection, transport security and promoting scientific and technological progress for targets relevant to the group. In 2004 the group signed the 'UK/US science and technology agreement on Co-operation in Science and Technology for Critical Infrastructure Protection and Other Homeland/Civil Security Matters'. This document provides for the development, testing and evaluation of technologies for the observation of terrorist activity.

### ***3.5.11 Initiatives by the United States***

The Anti-Terrorism Assistance programme of the American State Department, which was first founded some time ago, was expanded after 11 September 2001. This programme is used to support states in the prevention of terrorism and attacks on American interests. Hundreds of millions of dollars have been invested for this purpose, mostly in African countries.

The United States also stepped up cooperation with Saudi Arabia. While the government is an ally of the United States in the fight against terrorism, there is support amongst the population for al Qaeda and similar groups. The Islamist ideology is propagated by Islam schools (and Websites).

Bilateral collaborations have also been set up with a number of other countries, including Pakistan and South American countries.

The FBI has an International Training and Assistance Unit, which organises, amongst other things, seminars for high officials from a range of countries.

## **3.6 Policy aimed at securing critical infrastructure**

### ***3.6.1 Determination of critical infrastructure***

#### *Germany*

After 11/9 the German BKA (Bundeskriminalamt) was asked to give its advice on securing critical infrastructure and to submit relevant information and threat analyses to the organisations and authorities involved.

The BBK (Bundesamt für Bevölkerungsschutz und Katastrophenhilfe) was set up on 1 May 2004 and is responsible for developing crisis and emergency plans. In case of the collapse of critical infrastructure the THW (Bundesanstalt Technisches Hilfswerk) can be called in. The document 'Schutz Kritischer Infrastrukturen — Basisschutzkonzept' was published in November discussing cooperation with businesses ([www.bmi.bund.de](http://www.bmi.bund.de)).

#### *Italy*

In Italy a decision was taken after 11 September 2001 to step up the security of 'strategic targets', such as water supplies, electrical systems and the chemical industry.

### *Spain*

The working document states that the security of critical infrastructure is usually left to private security firms, with the use of camera monitoring. If a terrorist threat has been identified, a 'permanent' monitoring system is put into action in which members of the police, Guardia Civil and private security services are called in. Spanish high-speed trains are checked according to the same procedures as those used in airports. This is not the case for other trains.

### *United Kingdom*

The policy on the protection of civilians and interests was set out in the third of the four 'discussion papers' on counterterrorism policy (see also par. 2.5). The basic idea is to make the United Kingdom a 'harder target' for terrorists. This means, in particular, that it should become more difficult for terrorists to enter the United Kingdom and to function there. In addition, it is important to protect critical infrastructure more effectively. Critical infrastructure is understood to comprise services and industries vital to every-day life.

Securing the continuity of society in times of crisis is regarded as a fundamental task of the British government. The services and systems required for this continuity are referred to as the *Critical National Infrastructure* (CNI). The CNI comprises the resources, services and systems that support the economic, political and social life. The importance of these systems is such that their failure could lead to large-scale loss of human life, substantial damage to the national economy and therefore very considerable social costs.

The Critical National Infrastructure in the United Kingdom comprises the following ten sectors: communication, emergency services, power supply, financial industry, food supply, government and public services, health, public security, transport and water supply.

In 1999 a National Infrastructure Security Coordination Centre was set up, with the aim to make threat analyses, to outreach, to respond to calamities and to promote relevant research.

According to information on the Home Office website, the aim is to ensure cooperation with businesses in protecting their critical infrastructure. In a broader sense, the aim is to secure the continuation of businesses in times of crisis. Central in this activity is the creation of a single 'desk' which companies can contact for information and advice. In addition, great importance is attached to stimulating credibility and trust by realising consultation between industry and representatives from local and regional governments<sup>70</sup>.

### *United States*

In the United States the Department of Homeland Security (DHS) is working with leaders from the industrial world to protect businesses that are deemed important for national security. Risk analyses are carried out and specific security strategies are developed for which DHS provides technical support.

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<sup>70</sup> <http://security.homeoffice.gov.uk/working-with-partners/business/>.

Separate initiatives have been implemented for the chemical industry. Under a separate Act (the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act) the Ministry of Justice monitors the implementation of previously arranged facilities to prevent accidents involving the release of dangerous substances such that they are also effective during a terrorist attack.

Incidentally, an audit from 2002 by the Government Accountability Office (GAO<sup>71</sup>) showed that these intentions were in fact still awaiting implementation. A start has been made, however, on the development of a special *risk assessment instrument* for the chemical industry and a training programme for managers.

### **3.6.2 Aviation**

#### *Germany*

Staff at airports and companies are checked more thoroughly, using information from security services (including information accumulated by the former DDR intelligence service Stasi). The 'second counterterrorism package' defines the sensitive areas and institutes that qualify for intensive screening of staff (these areas are not actually named in the working document).

The Act on aviation control provides for, amongst other things, shooting down hijacked passenger airlines if there is no other option. This is a highly controversial issue in Germany.

#### *United Kingdom*

Since 9/11, Royal Air Force fighter jets have been on stand-by to shoot down any hijacked passenger plane if necessary<sup>72</sup>.

#### *United States*

A range of measures was implemented following 9/11 to improve civil aviation security which had so obviously failed. Most important was the set up of the Transportation Security Administration (TSA). Previously, airport security had been carried out by private businesses with high staff turnover rates. Security is now the sole task of TSA, which has led to considerable improvements, also in the eyes of the public, even if customs control still fails at times and some outdated airport equipment is still awaiting replacement. According to working document 5 TSA is bothered by the extensive bureaucracy inherent in such an organisation, affecting its flexibility. A number of airports have been granted approval to work with 'TSA-certified contractors'. Other airports have also been given this option, but have not used it for fear of legal procedures in the event of an attack for which the privatised security could somehow be held accountable.

Measures to frustrate plane hijacking have also been taken onboard airliners. These measures include reinforcement of cockpit doors, training in the use of weapons by crew and *air marshals* travelling on flights. Staff member screening has also been stepped up.

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<sup>71</sup> This abbreviation was used previously for General Accounting Office.

<sup>72</sup> Unlike in Germany, this measure has not led to any upheaval in the United Kingdom.

The danger of attacks using rocket launchers fired from the shoulder, readily available on the black market, has been recognised and has inspired studies into defence systems for scheduled flights. They were found not to be cost effective, however. Vulnerability analyses are carried out for all key airports in the United States. Internationally, proliferation of these weapons is being dealt with.

The fine-tuning of the electronic matching of passengers to their baggage was first started before 9/11, when suicide attacks were not yet considered an option. The CAPPs (Computer Assisted Passenger Prescreening System) is used to create an algorithm to track those passengers that form a potential danger. The addition of biometrical and other personal data to the CAPPs databases is being considered.

### ***3.6.3 Shipping***

#### *United States*

The Container Security Initiative (CSI) plays a big role in shipping security. It comprises the monitoring of containers shipped to the United States before departure if there is reason to do so. For ships travelling to the United States, the Operation Safe Commerce demands that they specify what they will be shipping before loading commences, to allow plenty of time for inspection. NII (Non Intrusive Inspection) technology is used to increase the chances of finding explosives or weapons of mass destruction.

### ***3.6.4 Cyberspace***

#### *Germany*

The BSI (Bundesamt für Sicherheit in der Informationstechnik) has been working on securing the ICT sector since 1998.

#### *United States*

DHS has set up the National Cyber Security Division (NCSD) to reduce vulnerability of computer systems to terrorist attacks. The NCSD has taken a range of initiatives, amongst others to secure government computer systems against viruses and 'internet worms'.

### ***3.6.5 Nuclear materials***

In the *United States* academic nuclear reactors in particular are considered a high-risk factor as their security is much weaker than the security of power plant reactors. Little progress has yet been made in improving security of these reactors, due to, amongst other things, lack of funding. The United Kingdom has also recognised this problem<sup>73</sup>.

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<sup>73</sup> Gleys and Pope (2205) also mention the danger of students from certain countries.

### **3.7 Policy aimed at crisis management: preparing for an attack**

#### **3.7.1 Institutional facilities**

##### *France*

For intervention in any serious crisis a specialist arrest team is available, the GIGN (Intervention group of the National Gendarmerie) which is known for, for example, liberating a hijacked plane in 1994. There is also the RAID (Research, Assistance, Intervention, Dissuasion) which played a significant role in restraining Action Direct in the nineteen eighties. There is also a special intervention unit of parachutists.

##### *Spain*

After the March 2004 attacks the Delegate Government Commission for Crisis Situations was set up, comprising the Prime Minister, vice Prime Minister and the ministers for Foreign Affairs, the Interior and Defence, the state secretary for security, the director for CNI (national intelligence centre) and the director of the cabinet of the Prime Minister.

The three-division department of Infrastructure and Follow-up in Crisis situations is responsible for giving advice on urgent measures to be taken in a fitting and immediate response to a crisis. An organisational chart has been included in working document 4.

##### *United Kingdom*

Terrorist crimes are dealt with at the national level. The Home Office decides on supporting local authorities. The Ministry may convene the Government's Crisis Committee, headed by a high-ranking official or a minister, to coordinate a crisis response.

Regional and local responses are considered crucial. A single national framework has been created under the Civil Contingencies Act 2004. The Civil Contingencies Secretariat of the Cabinet Office is responsible for assisting in and supervising crisis planning via the UK Resilience website ([www.ukresilience.info](http://www.ukresilience.info)). The so-called Regional Resilience forums draw up crisis plans for situations that transcend a local response.

Other institutional facilities in the field of crisis management are the National Mass Fatalities Working Group and the Regional Resilience Teams. The task of the family assistance centres is providing support to the family of victims and survivors.

A CBRN Resilience programme was set up in 2001, with the aim of combining expertise in the field of chemical, biological, radiological and nuclear terrorism from government and partner institutions, in order to ensure a fast and effective response to a terrorist attack in which CBRN materials are released.

Under the British approach the media must be expressly involved in the crisis plans.

##### *United States*

Commissioned by the president, a National Incident Management System (NIMS) has been set up. This system is aimed at making all authorities involved 'interoperable' in an incident, whether this is a terrorist attack or a natural disaster.

### **3.7.2 Drills**

#### *Italy*

Drills are held at the local level, testing the cooperation between the various government authorities and the fire brigade to protect the population. These drills reveal any weak points in the system, which can then be addressed.

#### *United Kingdom*

The Counterterrorism drill programme is aimed at testing and improving skills. An international drill was held with the United States and Canada, entitled Atlantic Blue. It practiced response procedures in case of a catastrophic incident involving chemical and/or biologic materials, both in a foreign situation and in London<sup>74</sup>.

#### *United States*

A range of measures has been implemented in the United States to be able to control the effects of a major terrorist attack. Simulation training sessions were already held under the Clinton government. A major drill was organised following the 9/11 events, simulating an attack with weapons of mass destruction in a number of major cities. Canadian government authorities were also involved in this. It goes without saying that the army also organises drills.

*First responders*, the people who are the first on the scene of a disaster or attack, such as police, firefighters and ambulance staff, are trained in considerable numbers. Community Emergency Response Teams (CERT) training is given at 400 locations across the United States. 28 'urban search and rescue teams' have been set up to be used in incidents involving weapons of mass destruction.

The biggest concern is the notion that terrorists could have biological weapons. Attempts have been made in the past to poison drinking water and shortly after 11 September politicians received letters contaminated with Anthrax, the bacterium that causes the disease Anthrax. The budget for defence against bio terrorism has been increased considerably and public healthcare authorities are making extra efforts to fight the spread of diseases by terrorists. Strategic stocks of certain medication have been expanded and five hundred thousand soldiers have been vaccinated against smallpox. Under the BioShield project 5.6 billion dollar has been invested in developing new vaccines and other means to fight the effects of attacks involving NCBW weapons.

Regulations on and institutional facilities for food safety have also been reinforced.

### **3.7.3 Victim aid**

Assistance schemes for victims and their families have been set up in various countries that have been confronted with major attacks.

#### *France*

Since the Act of 1990 victims of terrorist attacks have the status of 'civil war victims'.

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<sup>74</sup> An evaluation report was announced to appear by the end of 2005, but its publication is still awaited in April 2006.

### *Italy*

A special Act has been adopted that specifies assistance to victims and their families. The underlying idea is that this signals to the population that the government backs its residents in case of an attack.

### *Spain*

Arrangements have been made for compensating victims of terrorism. Spain also has a range of pension schemes and other arrangements for victims and surviving relatives (set out in the appendix to the working document).

The working document lists more than ten Websites for organisations of victims of terrorism. These organisations are assigned an important role in dealing with actual crises. Spain has a special medal of honour for people killed or wounded in the fight against terrorism.

### *United States*

After the attacks of 11 September 2001 an 'emergency response package' totalling 40 billion dollar was reserved in the United States for families in the areas hit. Special legislation ensured the process was sped up. In addition, a special fund was set up for the New York fire brigade, which became topic of discussion as it has not yet been fully spent. The government wants the money back, while the FDNY argues that it is needed for support in the longer term.

## **3.8 Policy aimed at fighting terrorist finance**

### ***3.8.1 Penalisation of funding terrorism***

Fighting terrorist funding is a key instrument in the general fight against terrorism. After all, terrorism costs money. It is argued that if the flow of funds can be stopped, terrorism will also subside. Fighting terrorist funding can take a place on many fronts. An important measure is the freezing of terrorist and terrorist organisations' funds and restrictions to make financial or economic means available to, or to carry out financial services to or for these individuals or organisations. This stipulation is one of the measures announced in Resolution 1373 of the UN Security Council of September 2001, which obliges nations to actively prevent and fight the funding of terrorist acts. The funding of terrorism has been penalised in many countries, often in combination with money laundering measures<sup>75</sup>. In some countries (including Germany) terrorist funding is covered by the stipulation of 'support of a terrorist organisation'.

In order to make the measures in Resolution 1373 concrete, the Council of Europe published a list at the end of 2001 with the names of individuals whose assets needed to be frozen and who were no longer permitted to do business. The Netherlands uses both this list and the list for the execution of Resolution 1267 (1999), which provides for financial sanctions against the Taliban, Osama Bin

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<sup>75</sup> As criminal sources of funding, terrorist finance and money laundering are usually referred to in combination. Difference between the two, however, are important in being able to fight them. The source of the funds for terrorist finance is not necessarily criminal, although the purpose of the funds is. The source of the funds used in money laundering the source is always criminal (See also: Raaijmakers, 2005).

Laden, al-Qaeda and people and organisations associated with them<sup>76</sup>. Clearly, inclusion on such list has far-reaching implications. The list executing Resolution 1373 (referred to in EU as the EU sanction list) is known to be compiled based on unanimous decisions by the EU Member States. They base themselves on information from databases or otherwise from which it appears that competent authorities have taken a decision with regard to the persons, groups or entities referred to, which can be the start of an investigation or the continuation of criminal proceedings involving a terrorist act, an attempt to commit such an act, or the participation in, or facilitation of, such an act, based on evidence or serious and credible indications, or a conviction for such offences. Individuals, groups and entities which the Security Council of the United States have linked to terrorism and against whom it has ordered these sanctions, may be placed on the list. For the application of this paragraph 'competent authorities' are understood to be a judicial authority or, if judicial authorities do not have jurisdiction in the field covered by this stipulation, comparable authorities authorised in that field<sup>77</sup>. It is not quite clear how the list is kept up to date within the various Member States. Until recently, Mohammed B., who murdered Theo van Gogh, was not on the list, despite having been prosecuted and convicted for a terrorist act by a competent authority, namely the courts. However, it recently became clear that the assets of the convicted members of the Hofstadgroep were frozen as of April 2006<sup>78</sup>. Whether or not this means they are now also included on the list used for the implementation of Resolution 1373 is not yet clear<sup>79</sup>. In addition to freezing assets, financial institutions and the obligations imposed on them play a large role in fighting terrorist funding. A number of countries have introduced the obligation to inform the authorities about suspect accounts held by organisations, and of any particularly complex or unusual transactions that do not serve any economic purpose<sup>80</sup>.

Internationally the fight against terrorist funding is headed by the FATF (Financial Action Task Force).

### *Germany*

In Germany banks and other financial institutions, as well as individuals and institutes, are under an obligation to report certain transactions or suspect matters under the *Geldwäschegesetz* (GwG). The German government may restrict transactions or activities in the field of foreign trade and payments with the aim of providing protection against certain risks (for example state security).

### *France*

French legislation provides for penalisation for failure to substantiate a more expensive lifestyle than is reasonably possible based on reported and verifiable

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<sup>76</sup> See also: Bulterman (2005).

<sup>77</sup> Common viewpoint of the Council of 27 December 2001 regarding the application of specific measures to fight terrorism.

<sup>78</sup> [http://www.volkskrant.nl/binnenland/article288456.ece/Banktegoeden\\_leden\\_Hofstadgroep\\_bevroren\\_20/4/2006](http://www.volkskrant.nl/binnenland/article288456.ece/Banktegoeden_leden_Hofstadgroep_bevroren_20/4/2006).

<sup>79</sup> Lawyers have argued that the refusal of a bank account to members of the Hofstadgroep requires a very broad interpretation of Resolution 1373, which they say is aimed at blocking large international flows of money from organisations like Al Qaida. They argue that it is used as punishment in this case. The probation and aftercare services argued that the measure will have a side effect, namely that the integration of convicted individuals who have served their sentence is going to be problematic. See also: Volkskrant 21 April 2006 'Bevriezing tegoeden leden Hofstadgroep 'onwettig'.

<sup>80</sup> In the Netherlands: article 17 of the Third Laundering Guideline.

income data, while in regular contact with persons suspected of, or convicted of terrorist crimes. By law of January 2006 (*Loi n°2006-64 du 23 janvier 2006*) the sentence for violating this stipulation has been raised from 2 to 3 years.

#### *United Kingdom*

Measures have been taken in the United Kingdom to cut off, where possible, international terrorist-related flows of money. International regulations in this respect taken by, amongst others, the UN, G8 and the EU were implemented in the British Counterterrorism Finance (CTF) policy. It seeks cooperation with industry, particularly the financial institutions<sup>81</sup>.

An obligation applies in the United Kingdom to report any information on any person if it is suspected that the other person has committed a terrorist crime. This obligation applies not only to civilians, but to financial institutions also.

The possession of any goods in circumstances that inspire reasonable suspicion that the possession has a terrorism-related purpose is punishable. No proof is required to demonstrate that the person in possession of the relevant object has certain (in this case terrorist) intentions.

#### *United States*

In 1996 'Terrorism Laws' were adopted which formed the basis for a list of 'Foreign Terrorist Organisations' (FTOs). Under the laws FTO assets can be frozen and financial or other material support to these organisations may be classed as crime. Under 'Executive Order 13224' president Bush expanded the scope of this order. Meanwhile, a number of charities have been closed down following operation of this order. The aim is to destroy the formal and informal financial structures of terrorist organisations.

A point for attention for the United States is the '*hawala*' informal banking system, which deals with large sums of money based on trust. The hawala banking system leaves no paper or digital trail and is legally used in countries where people have virtually no access to banks. It can also be used by criminals and terrorists, however. The United States have therefore decided that Hawalas must be registered and must observe the rules on money laundering and terrorism funding.

### **3.8.2 Organisational measures against the financing of terrorism**

A number of countries have opted for centralisation of the fight against terrorist finance by setting up a body for this purpose.

In *Germany* the 'Bundesanstalt für Finanzdienstleistungsaufsicht' (BaFin) and the 'Zentralstelle für Verdachtsanzeigen' (FIU) are responsible for combating terrorist finance, investigating suspect cases. A new stipulation contained in the 'Kreditwesengesetz' paved the way for the introduction of a data system which provides BaFin with electronic access to all information regarding accounts held with banks. The new system also enables the immediate freezing of financial assets of individuals and organisations, as set out in specific stipulations.

In *France* a special division was set up within the Ministry van Finance, entitled FINTER ('cellule contre le financement du terrorisme'). TRACFIN ('traitement du

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<sup>81</sup> House of Commons Hansard: Statement on Terrorist Finance, November 2005.

renseignement et action contre les circuits financiers clandestins’) is another department aimed at tracing flows of money of terrorist organisations. Banks and other financial institutions are obliged to report to TRACFIN any transactions which they (might) suspect are involved in or could be used for terrorist activities.

The working document on *Italy* reports the set up of ‘Comitato di sicurezza finanziaria’ (CSF). This committee aims to:

- a protect the financial system against terrorism,
- b collect information aimed at freezing accounts of organisations affiliated with terrorism
- c develop regulations to reinforce the fight against terrorist finance and contribute to EU lists on terrorist organisations, whereby the problem of individuals and organisations with names that appear on the list, but who have nothing to do with terrorism, should be solved
- d maintain close relations with similar institutes in other countries.

The underlying idea is that the financing of terrorism is an international phenomenon, which should therefore also be fought through internationally coordinated actions. Several institutions are coordinated from the ‘Comitato’ which are involved in fighting terrorist finance.

In *Spain* the fight against terrorist finance is arranged under the act of 2003 on the ‘prevention and freezing of terrorist assets. Special powers have been created to visualise and stop terrorist flows of money and identify the individuals responsible. These powers have been assigned to the ‘Commission for Supervision of Activities for terrorist finance’. The international lists of individuals and organisations associated with terrorism are also used. The emphasis is on the prevention of terrorism rather than the punishment of the parties involved in the financing terrorist organisations. Both the police and the Guardia Civil comprise special units to fight terrorist finance.

In an international context the *United States* aim to promote cooperation in fighting terrorist finance. Special importance is attached to resolutions 1373 and 1390 of the Security Council, which obliges the Member States to take action against terrorist finance. At a bilateral level collaboration takes place with various countries, who receive technical and training support. A number of international cooperation unions for the fight against terrorist finance exist, such as the Egmont group (a cooperation of 61 financial institutions) and the ‘Financial Action Task Force’ (FATF), set up to fight money laundering.

### **3.9 Aliens law**

To be able to deal with aliens suspected of terrorism, criminal measures may be combined with measures based on aliens law. In recent years a number of counterterrorism measures under aliens law have been added, at least in the Netherlands. In the Netherlands the Immigration and Naturalisation Service (IND) is authorised to withdraw residence permits if the permit holder poses a risk to public order and /or national security. The General Intelligence and Security Service (AIVD) decides on the basis of official reports whether or not the permit holder poses such a threat. In addition to withdrawing the permit, there are a

number of other measures available under aliens law: an advice to refuse admission, removal from the Netherlands, an order declaring a person an undesirable alien and identification, or refusal to grant and/or withdraw Dutch citizenship already granted. In other EU Member States, too, measures under aliens law may be used in antiterrorism policy.

### ***3.9.1 Measures taken under Aliens law***

#### ***Withdrawal of double nationality***

Some countries where double nationality is permitted, such as in Greece, allow withdrawal of nationality if this is in the interest of national security (working document 7). In Italy the Italian nationality of a person with double nationality may be withdrawn only if the person enters into military service of a foreign power, against the express wishes of the Italian authorities, or when the person takes up arms against Italy.

Double nationality is permitted in Spain, but the authorities are unable to withdraw Spanish nationality when a citizen poses a threat to national security.

#### ***Deportation***

Deportation is another measure related to the withdrawal of state citizenship that can be taken away with regard to an alien who harms or may harm the security interests of a state.

#### ***Germany***

In Germany the Ministry of Foreign Affairs is responsible for the removal of criminal and radical foreign nationals. If they cannot return to their countries of origin, they are deported to 'third countries'. New immigration laws curb protection from deportation of foreign nationals. Stipulations on granting residence permits and the grounds based on which people may be deported have also been defined further.

#### ***France***

Under French law every foreign national convicted for a terrorist offence may be expelled from French territory, forever or for a maximum of ten years. Operations by the police and the Renseignements Generaux (RG) have led to the arrest of hundreds of people who appeared on the lists of the counterterrorism services. Others who had been known to the intelligence services for some time have since been deported. Deportation of extremists from French territory is regarded an important tool in destabilising radical networks. The working document does not specifically address legislation and regulations in this field, however. Like most other EU countries, including the Netherlands, France has signed the Prüm treaty, a continuation from the Schengen treaty<sup>82</sup>.

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<sup>82</sup> The author of the working document on France, Didier Bigo, wrote a critical report with others on the 'Management of Threats' involved in that convention (CD-Rom ELISE project, European Liberty and Security See also: [www.libertysecurity.org](http://www.libertysecurity.org)).

### *Italy*

Under Italian law, too, it is possible to deport non-Italian nationals, based on three circumstances. First of all, deportation of a foreign national may be ordered by the Minister of Foreign Affairs if this foreign national poses a threat to the public order or state security, or when there are sound reasons to believe that terrorist activities and organisations may be facilitated by the continuing presence of the foreign national. Under this act the deportation of hate-spewing imams has become possible. Some concrete cases are mentioned, particularly Imams from Carmagnola and Turin. According to the Italian working document this approach faces one problem, namely that it is effective in the short run only. Such deportations comprise a return ban to Italy for a minimum of five years, but usually ten. Deportations of this kind are usually carried out if there is information that shows that an individual poses a threat to national security, but when this information is not enough to serve as proof in a legal process. Appeals against these deportations may be made to the administrative court. If necessary, a further appeal against this decision is also possible. An appeal against this form of deportation does not have a suspensive effect and the deportation order is enforceable immediately. Act 155/2005 states that if the information on which the deportation order is based originates from a covert operation or is a state secret, it may be withheld for two years. The consequence is that appeal cases are suspended during that period. Based on this act deportation orders pertaining to public order and security, or terrorist activities, may be enforceable immediately. A second ground based on which deportation may take place, is when a foreign national does not meet the conditions subject to which residence in Italy is permitted (for example if the visa has expired or the subject has been working illegally). Thirdly, deportation of a foreign national may take place if he or she usually lives partly or entirely from the proceeds of crime, acts in a manner that affects or endangers the moral or physical well-being of youngsters, public health or public security, or belongs to a mafia-like organisation. Since 2 August 2005 a foreign national may also be deported if he or she, in a group or alone, is carrying out criminal offences with the aim of toppling the democratic legal order of the state. The latter two forms of deportation referred to are carried out by the prefect (police commissioner). Appeals against a deportation order issued by the prefect may be made to the district court only. Such appeal does not have a suspensive effect. Foreigners cooperating with the Italian justice department in fighting terrorism may be granted a special residence permit under the act of 2005.

### *Spain*

A non-Spanish national may be deported if he has taken part in activities that are harmful to the external state security or foreign relations, or in activities that violate public order. The Spanish law provides for a specified list of these activities. Based on this, the accused may be deported through an accelerated procedure. This procedure substantially reduces the duration of the process and determines that no appeal has a suspensive effect. The only way to postpone an accelerated deportation, is by applying for asylum. Consideration of the application for asylum may be refused if it is regarded as unfounded by the authorities or if there are suspicions that the application has been submitted solely to delay the procedure.

### 3.9.2 *Registration of Aliens*

Many EU countries and a number of countries outside the EU (Norway and Iceland) use the Schengen Information System (SIS), a databank with personal details. The system is used by countries to register arrest warrants, individuals who have been denied access to a country and must therefore be deported and individuals on whom information must be collected for state security reasons. This enables the exchange of information between countries.

There are also national initiatives that relate to the registration of foreign citizens. In *Germany* in particular databases are kept with information on foreign nationals. There is a central database, for example, with data on all residential immigrants (everyone in long-term residence) with information on status and criminal record, among other aspects. The data protection authorities have since allowed police and intelligence services access to these databases. In the second German antiterrorism package the powers are extended further. 'Spontaneous' information on religion must be included in the database. The database is accessible for dragnet and other studies by intelligence services. Aviation authorities have unlimited access to the database for staff screening purposes. Working document 1 also indicates that the second German antiterrorism package (also 'Act combating international terrorism') is aimed particularly at changes to asylum and aliens legislation. Specific legal asylum and aliens measures in the second package:

- The alien authorities (Migration and Refugee Service and local authorities) must spontaneously provide the 'Verfassungsschutz' (the national security service) with information on radical activities of people known to them,
- Biometric characteristics on aliens passports,
- More fingerprints are taken of aliens than ever before (initially only of asylum seekers and refugees of civil wars, now also if they are returned to a 'third country', if residence is refused on suspicion of radicalism and if they originate from countries to which repatriation is not easy, or if there is a suspicion that the subject has also applied for asylum in other EU countries),
- Speech analysis is applied to determine the country /region where the refugee is coming from,
- Certain nationalities and categories of aliens are earmarked for further studies in connection with radical activities. Relevant data may be stored without unrestrictedly,
- The second package comprises the EU measures of 20 September 2001 and resolution 1373 of the Security Council which have also been implemented in national legislation. The latter resolution aims at restricting the freedom of movement of terrorists by stepping up border control, improving the fight against identity fraud, improving information exchange between services and preventing the abuse of the refugee status. Finally, the European EURODAC<sup>83</sup> rules have been included in the new German legislation. Other policy fields are also covered by this act<sup>84</sup>.

In Germany information on potential immigrants is routinely gathered from the 'Verfassungsschutz', with the aim to keep out people who have already been in contact with known radicals. Federal states decide on this research themselves.

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<sup>83</sup> Eurodac is a European databank for the storage of fingerprints. See: European Commission, 2004.

<sup>84</sup> According to Albrecht, author of working document 1 on Germany, the Act has come under heavy criticism from privacy protection institutes and constitutional experts.

In *Spain* people are working with databases to be able to keep a closer eye on the inflow and outflow of aliens in the country. This is a result of the implementation of the Schengen agreements of the EU. So far, however, there is little insight in the number of illegal immigrants in Spain.

After the attacks of 11 September 2001 in the *United States* it became clear that it was possible to remain in the country illegally after expiry of a student or other temporary visa. Entry controls into the United States have been tightened and holders of temporary visas are monitored more closely. Visas have become more fraud-proof and most applicants are questioned before their visa is issued. Information about visa holders is shared between the various government services. The Visa Outlook programme has been reinforced and the Transit Without Visa (TWOV) programme suspended. People who appear on any of the lists of potential terrorists will be refused a visa.

Various measures have been created for the many students in particular who enter the United States every year, to ensure that there are no terrorists amongst them trying to get into the country. Within this framework, the Student and Exchange Visitor Information System was set up, which operates alongside the Foreign Terrorist Tracking Task Force set up by the FBI.

Within the framework of the VISIT programme (Visitor and Immigrant Status Indication Technology) the biometrical and biographical data for all incoming travellers are recorded in a database. In 2005 experiments were carried out with RFID (Radio Frequency Identification). The use of a 'tag' could be the answer to creating a more accurate correlation between incoming and outgoing travellers. In order to be able to remove foreign terrorists from the country, the ATRC (Alien Terrorist Removal Courts) were founded in 1996. Based on classified information people could be deported from the United States, although the parties involved were able to defend themselves. The ATRC, however, never worked. The INS (Immigration and Naturalization Service) deported aliens based on secret information through immigration courts, without informing the accused or his or her solicitor. These and other measures have raised questions on some antiterrorism measures and their compatibility with human rights. To an even greater extent this also applies to the registration duty for residents of countries associated with terrorism, introduced in September 2002. Individuals found to have committed a crime (mostly violations of immigration laws) were detained, sometimes under dire circumstances.

Yet all the measures which the United States takes to close the borders cannot prevent that many cross the borders from Canada and Mexico, including perhaps people with terrorist motives. A 'Smart Border Declaration' has been signed with Canada, aimed at creating tighter border control and the addition of another 1000 customs officials. A similar agreement was signed with Mexico.

Refusing access to a country is used in some countries, including Sweden and Poland, in the antiterrorism policy (working document 7). A visa or a declaration to enter may be refused if there is reasonable doubt that the foreign national is involved in terrorist activities, participates in such activities, or heads a terrorist organisation or is a member. Foreign nationals may also be refused access if their presence is unwanted in light of them posing a threat to national security or public order.

### 3.10 Measures concerning criminal law

#### 3.10.1 Definition of terrorist crimes

EU countries have agreed to classify certain serious and punishable acts as terrorist crimes, as set out below. According to working document 3, the importance of aligning criminal legislation in Europe is demonstrated by the fact that before the framework decree on combating terrorism of 13 June 2002 was adopted only 7 Member States had specific legislation in the field of counterterrorism, namely France, Germany, Italy, Portugal, Greece, Spain and the United Kingdom. In the other countries crimes with terrorist intent were committed, prosecuted and tried based on common criminal law, without additional provisions.

The EU framework decree on combating terrorism of 13 June 2002 required the inclusion in national criminal legislation of a number of terrorist crimes defined. Eight punishable acts set out in the framework decree must be classified as terrorist crimes if committed with a terrorist aim. This terrorist aim is defined as seriously intimidating a population, unduly compelling a Government or international organisation to perform or abstain from performing any acts, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation,

The eight punishable acts are:

- a attacks upon a person's life which may cause death;
- b attacks upon the physical integrity of a person;
- c kidnapping or hostage taking;
- d causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- e seizure of aircraft, ships or other means of public or goods transport;
- f manufacture, possession acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons as well as research into, and development of, biological and chemical weapons;
- g release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
- h interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life.

A ninth crime relates to threatening to commit any of the eight crimes set out above.<sup>85</sup>

Below we have set out how the definition of terrorism has been included in the national legislation of the five EU countries investigated. Germany, France, Italy, Spain and the United Kingdom are known to have implemented the EU framework

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<sup>85</sup> The EU network of independent experts in the field of legal principles has voiced its concerns on the ease with which the definition of terrorism from the EU framework decree of 13 June 2002 was adopted by the EU Member States. According to the network, an accurate definition is required and control mechanisms must be included in legislation to be able to protect fundamental freedoms in this matter. See Euractive.com ([www.euractiv.com/Article?tcaturi=tcu:29-136674-16&type=LinksDossier](http://www.euractiv.com/Article?tcaturi=tcu:29-136674-16&type=LinksDossier)).

decree of 13 June 2002 regarding the fight against terrorism and that the relevant legislation has become effective.<sup>86</sup>

### *Germany*

The official definition of terrorist crimes is contained in Section 129a and b of the Penal Code. The definition is based on the definition provided in the EU framework decree on combating terrorism. Section 129a stipulates a broad approach to terrorist offences, which comprises, amongst other things, recruitment, training, preparatory acts and financing. Section 129b serves as an addition to criminal law sections on the membership of any terrorist association (targeting murder, genocide or any other crimes aimed at the freedom of or the endangering of the public) such that membership of foreign associations is also banned.

In the debate on Section 129a the concept of ‘supporting’ terrorist organisations received a great deal of attention. The initial idea was ‘to campaign’ for penalising terrorist organisations. This goes back to the hunt of ‘RAF sympathisers’ from the nineteen seventies, but was defined by critics as too vague and broad. The notion has now been restricted to ‘recruitment’ (werben). According to working document 1 this still fits the requirements of the EU framework decree.

### *France*

The Counterterrorism Act of 1986 defines terrorism as ‘a legal violation committed by an individual or a group of individuals, aimed at seriously disrupting public order through intimidation and terror’. Under this act a terrorist offence comprises an objective and a subjective element. The objective element is expressed in a list of 39 offences described in the penal code. The subjective element is expressed in the offender’s aim. The offence described in the list is classed as terrorist, when the punishable offences “*are in relation with a personal or collective venture which aim is to cause a serious disturbance to public order by means of intimidation or terror*”. The fact that the aim of the offender is the key element in the definition of an offence as being terrorist, is criticised by some in France as being too broadly interpretable, according to working document 2.

### *Italy*

Italian legislation refers to ‘subversion’ (Section 270 Criminal Code) and ‘terrorism’ (Section 270 Criminal Code). Under Section 270 Criminal Code subversion is defined in the report on Italy as

- a The violent establishment of a dictatorship of one class over all other classes,
- b The violent suppression of any social class,
- c The violent destruction of the economic and social system of the state,
- d The violent destruction of the political and legal system.

The starting point for the definition of terrorism dates back to 1980 and comprises a ban on ‘organisations that are committed to terrorism, including international terrorism, or the undermining of the democratic order’. Section 270 bis Criminal

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<sup>86</sup> EU (2005).

Code focuses specifically on terrorist movements in Italy in the nineteen seventies. In 1987 the High Court provided some definition of 'terrorism', which was: 'actions aimed at trust in the established order, not aimed at people, but at everything these people represent'.

The article was amended in 2001 to include violence against international organisations. The term 'terrorism', however, was not defined explicitly.

On 31 July 2005 a definition was adopted that reflects elements from the first part of the EU definition, in which terrorist motivation is emphasised, but not the list of crimes set out in the second part. All crimes that meet the first conditions are taken to be terrorist, more precisely:

- crimes that cause serious damage to any country (and therefore in other countries too) or to an international organisation,
- and that aim to intimidate the population, or to force authorities to act or refrain from acting, or to destroy the fundamental structures of the country or the international organisation.

### *Spain*

The Spanish Criminal Code classes terrorist offences as crimes against the public order. The term 'public order' is not defined further in the criminal code, but the 'generally accepted' definition of this concept is the normal functioning of public and private institutes, internal peace, free development of fundamental rights and freedoms.

Spanish law defines objective elements, for example arson and destruction, which are considered terrorist offences only in combination with other elements. These other elements entail that the perpetrator must be a member of, act on behalf of, or work with armed groups, or organisations of groups which aim to disrupt the constitutional order or public security.

Important in this is that the 'membership' of an armed group or terrorist organisation (such as set out above) requires a 'direct relationship'. An armed group comprises, amongst other things, hierarchy and discipline. Weapons and other tools are provided by the organisation.

Spanish law also comprises a section that stipulates that crimes that are not described specifically as (terrorist) crimes in the Criminal Code, but which do share the same elements and purposes, are punishable as terrorist crimes.

### *United Kingdom*

The *reviewer* for counterterrorism policy, Lord Carlile of Berriew (see par. 2.5) has submitted a proposal for a definition of terrorist crimes. Meanwhile, people in parliament have argued in favour of inclusion of a definition in British legislation modelled after the one implemented by the UN and EU. Under the old Prevention of Terrorism Act of 1989 terrorism was defined as 'using violence for political purposes, including the use of violence in order to induce fear in the public or part of the police'. Under the Terrorism Act 2000 the definition was extended to include actions that do not necessarily involve violence, but which can have very serious consequences for public security, such as sabotaging the water supply or nuclear plants (Explanatory Notes to Terrorism Act 2000).

### ***3.10.2 New penalisation and extension of penalisation measures in place***

#### ***Penalisation of terrorist crimes***

Most EU countries have made terrorist crimes explicitly punishable in their national legislation. National differences do occur, however. Some countries have made specific terrorist crimes punishable in their legislation, while others have incorporated a full range of acts related to the battle against terrorism (United Kingdom). The report by Aksu a.o. (see working document 6) describes only the most remarkable stipulations.

The Terrorist Crimes Act has been in operation in the Netherlands since August 2004. One of the Act's stipulations concerns the penalisation of participation in an organisation that aims to commit terrorist crimes (Section 140a of the Criminal Code).

Participation in such an organisation is a punishable offence in other EU countries, too. This includes the United Kingdom where the offence does not in fact concern the participation in an organisation with a terrorist aim, but rather the support or promotion of the activities of an illegal organisation. Terrorist organisations are illegal in the United Kingdom. It is also a punishable offence in the United Kingdom to carry an object or item of clothing or to make these visible, that inspire reasonable suspicion of participation in, or support of, an illegal (terrorist) organisation. Another stipulation in British legislation concerns the penalisation of attending public meetings of three or more persons, if it is known that the meeting aims to promote the activities of an illegal (terrorist) organisation or to provide support. It is conceivable that such criminal provision will be introduced in the Netherlands as soon as the bill 'NGO treaty and ban on foreign organisations in violation of public order' becomes effective<sup>87</sup>.

Both Italy and France have imposed penalties on various forms of assisting terrorists. Unlike Italy, however, France demands intent. Dutch law also stipulates penalisation of assisting terrorists (Section 189 of the Dutch Criminal Code). While this stipulation is not specifically aimed at terrorist crimes, the specification of this stipulation is currently being fleshed out. Germany is also working on stipulations to make a stay in training camps punishable by law (as is the case in the Netherlands<sup>88</sup>). Incidentally, according to working document 1, section 39a (terrorist criminal organisation) may also be understood to include the organisation of training sessions.

One of the countries studied is known to have made the *provision* of training explicitly punishable. Under Italian criminal law a trainer may be liable to punishment if the persons trained aim to commit terrorist attacks. Under the EU treaty of May 2005 the EU countries are obliged to penalise the training of terrorists<sup>89</sup>.

In the United Kingdom such a criminal provision has been proposed under the Terrorism Bill 2005: if the trainer knows or suspects that the training is to be used for terrorist purposes, he or she is punishable. In addition, a person who does not

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<sup>87</sup> Bill 28764 proposes extensive options to ban terrorist organisations.

<sup>88</sup> Dutch parliament, see Kamerstukken II 2005/06, 29 754, no 60.

<sup>89</sup> Dutch parliament, see Kamerstukken II 2005/06, 29 754, no 60.

actually participate in the training, but who is present on the training site, is also punishable.

Finally, it is considered remarkable (working document 6) that civilians in the United Kingdom have the obligation to report all information they have if they suspect that another person is guilty of a terrorist crime. If they fail to do so, they are liable to prosecution.

### ***Penalisation ‘inciting terrorism’ and ‘glorification of terrorism’***

The ‘inciting terrorism’, but particularly the ‘glorification of terrorism’ are two stipulations that have been receiving a great deal of attention lately. The stipulation ‘glorification of terrorism’ (also called ‘apology’) is not just subject of discussion in the Netherlands, but in other EU Member States too. Recently the British House of Lords approved a new antiterrorism act that penalises the glorification of terrorism<sup>90</sup>. Although the conservative section of the House of Lords opposed the new antiterrorism law, it will become effective<sup>91</sup> in the near future. Dutch parliament is discussing a draft bill aimed at penalising the glorification, extenuation, trivialisation and denial of very serious crimes and the restriction of practicing certain professions<sup>92</sup>.

While most countries distinguish between inciting terrorism and glorification of terrorism, this distinction is often very vague. Some countries indicate for example that the glorification of terrorism is punishable under their national legislation where it concerns inciting terrorism. The glorification of terrorism has been penalised as a specific offence in a handful of countries only, including Spain. Under Spanish legislation ‘apologie du terrorism’ has been defined as: ‘praising or justifying, by means of the media or other method of distribution, crimes incorporated in the penal code, or of the people who have taken part in the execution of these offences, or of the execution of offences that cause damage, contempt for or humiliation of victims of terrorist acts or their relatives (...)’ The fact that only a few countries have such penalisation, is explained by the fact that this measure is regarded as an infringement of the freedom of speech<sup>93</sup>. If glorification of terrorism is not explicitly included as a specific offence in national legislation, it may be punished through general stipulations in some cases. After all, national legislation often comprises on the one hand penalisation in respect of the glorification of crime in general and on the other criminal provisions that relate to terrorist crimes. German law comprises a section, for example, that penalises ‘the distribution, public showing of lively descriptions of cruel and inhumane acts against humanity in a manner that glorifies such violence, or that trivialises the damage of such violence or the emphasis of the cruel and inhumane aspects of such violence in a way that harms human dignity’<sup>94</sup>. For the same reason, inciting terrorism has been penalised in a large number of countries. Inciting terrorism as a

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<sup>90</sup> 22 March 2006.

<sup>91</sup> the Antiterrorism Act was approved by the British House of Lords, as the conservatives withheld their votes to prevent a long-term postponement of the law. They are hoping that the law will be amended following the evaluation in a year’s time. Source: Elsevier, 23 March 2006.

<sup>92</sup> The letter by the Minister of Justice and the Minister of the Interior and Kingdom Relations of December 2005 shows that different advice was received on the draft bill to penalise the glorification of terrorist crimes and the ban on carrying out certain professions in the consultation rounds. This advice is currently being studied (Dutch parliament, see Kamerstukken II 2005/06, 29 754, no 60, page 13).

<sup>93</sup> Council of Europe (2004).

<sup>94</sup> Section 130a.

specific offence is also punishable in a considerable number of countries. As far as known inciting terrorism seems liable to prosecution in all EU countries, either under general or under specific stipulations.

British law incorporates a specific stipulation for inciting people from outside the territory to carry out terrorist crimes from one's own territory. The person who incites others from his or her territory, may be sentenced to the same punishment that applies to the offence to which he incited the other person.

#### *Extension measures in respect of hatred spewing persons*

The Dutch bill which penalises the glorification of terrorism also contains a stipulation that restricts individuals' professional options.<sup>95</sup> The bill provides for the option to remove people who have committed certain crimes from their profession. Examples include insulting groups of people, inciting people to hatred, or violence or discrimination in carrying out an office or profession. With the measures being extended, the judge may impose an additional punishment from the first conviction, namely a ban on carrying out certain professional activities. According to a letter from Dutch ministers Donner and Remkes, examples include activities in the sense of spiritual influencing (such as education, religious services and youth care)<sup>96</sup>.

In France, Spain and Germany individuals may be restricted in the choices they have as regards their profession. Individuals in these countries may be removed from their right to carry out any public post if they are part of a terrorist organisation or are associated with any such organisation.

### **3.11 Measures in the field of criminal procedural law**

#### ***3.11.1 Extension of (special) powers of investigation***

A range of (special) methods of investigation exist. The report 'Terrorism: Special investigation techniques' of the Council of Europe reveals that the main special methods of investigation are used everywhere and that there are no specific differences between Member States. The report also states: '*The Netherlands and Belgium can be considered countries using the full panoply of such techniques*' (page 16).

#### ***Requisition of personal data***

A special method of investigation which is under scrutiny in a number of countries, is the requisition of confidential information. In the Netherlands the Powers to Requisition Confidential Information Act (29 441) recently entered into force<sup>97</sup>. Under this act general competencies are added to Code of Criminal Procedure for the requisitioning of data. This means that third parties may be obliged to provide data in the interest of the investigation. If necessary, this may be obligatory. The powers in the law relate to:

<sup>95</sup> [http://www.NCTb.nl/wat\\_is\\_terrorism/wet\\_en\\_regelgeving/Wetsvoorstel\\_Apologie.asp](http://www.NCTb.nl/wat_is_terrorism/wet_en_regelgeving/Wetsvoorstel_Apologie.asp).

<sup>96</sup> Dutch parliament, see Kamerstukken II, 2004-2005 29754 no 5.

<sup>97</sup> Effective 1 January 2006 (Bulletin of Acts, Orders and Decrees 2005, 609).

- requisitioning so-called identifying data (including name, address, town, date of birth and gender, and administrative characteristics, such as the number of the Airmiles pass, membership number of a sports club, or bank account numbers)<sup>98</sup>
- the requisitioning of data other than identifying data (including information on services rendered, for example the type of videos rented, books borrowed from the library and for how long, or a person's grocery bills for the past month using his customer account pass, with a specification of the groceries, if recorded by the supermarket)
- the requisitioning of sensitive data (including data on a person's religion or philosophy, race, political persuasion, health, sexual life or membership of a professional union),
- the obligatory cooperation in decoding encrypted data.

### *United Kingdom*

In the United Kingdom, too, public institutions may be obliged to provide information (including tax and medical information) at the request of police or intelligence services. However, the information may be only requisitioned if it is to be used in a criminal study (which may be at a later date). Unlike the Netherlands, requests for information in the United Kingdom do not need to be based on suspicion. A bill is currently being discussed in the Netherlands which stipulates that a reasonable suspicion of a criminal offence is no longer required to be able to requisition information. Instead, *indications* that a terrorist attack is being prepared<sup>99</sup> will suffice. The explanatory note describes indications as evidence contained in the information available that there are facts and circumstances that suggest that a terrorist crime would have been or will be committed. According to a letter by the Minister of Justice the question if the information will yield information will need to be reconsidered time and again based on factors such as reliability, concreteness and verifiability<sup>100</sup>.

### *Germany*

The 'Bundesamt für Verfassungsschutz' is authorised to demand disclosure of information on institutions such as banks, post offices, telephone companies and airlines. In Germany telephone and Internet data must be stored for a year. In addition, the police and the public prosecutor are entitled to search the information systems of, for example, credit card companies, telephone businesses, social benefit organisations and housing corporations. This allows for the dragnet method to be used in the criminal investigation, to compare personal data from various files with the offender profile (also see par 3.4). According to the report this method is also used to intercept radical foreign nationals. Following the implementation of the second German antiterrorism package (see par. 2.1) medical and other personal data are added to files open to 'dragnet research'.

A side effect of the *Rasterfahndung* method is the occurrence of random hits: information may be found that wasn't being sought, but that could be used in principle for commencing new procedures against new suspects. The German legislator has argued that new investigation studies may be commenced only for

<sup>98</sup> These examples are taken from Stevens, Koops and Wiemans (2004).

<sup>99</sup> For a discussion of the concepts of 'reasonable suspicion' and 'indications', see Corstens (2002).

<sup>100</sup> Dutch parliament, see Kamerstukken II, 30164 no 12.

crimes for which the relevant investigation method could have been used legally if the investigation was to have been carried out independently of the random hit.

#### *France*

French law allows for the collection of data from a large number of authorities. Investigation officials of the intelligence and counterterrorism services may requisition communication data from providers and internet shops. Within the framework of the prevention of terrorism, they also have access to a large number of computerised data files such as the vehicle registration system, driving license system, national identity card system, passport management system, electronic management system, foreign nationals files and personal details for foreign nationals and asylum seekers who have been refused access to France. Moreover, electronic personal data can be used for people travelling to or from any destination outside the European Union.

In France use is made of *profiling* techniques, which the authors say can result in 'discriminatory practices'. The measures are aimed particularly at foreigners who look 'Arabic Islamic', earmarked as a domestic enemy.

France is working hard on an ICT card for the gathering of information, but further information would have to show which measures exactly are taken, as the working document is not very specific on this subject. A National Commission for Information and Freedoms (CNIL) has criticised the new legislation: the verification of the identity of individuals outside their knowledge is rejected, although it does conclude that the loss of privacy and freedom does relate to the increased security. According to the French authors, the *datamining* methods have proven to be less effective so far than had been expected and they believe that *human intelligence* yields better results. They fail to present sources to support their claim, however.

#### ***Expansion of other special powers of investigation***

In addition to the extended powers of the police and intelligence services to access personal details, other special methods of investigation have also been extended in some countries. Examples include the use of searches of premises, observation and the interception of (tele)communication.

Under Dutch law options to collect information in exploratory studies have been extended. Examples include the options to search people without concrete suspicion of a punishable offence and the use of special powers of investigation, such as systematic observation and telephone tapping. The use of these powers of investigation is proposed to be advanced from the stage of reasonable suspicion to the indication phase<sup>101</sup>.

#### *Germany*

Germany uses the so-called IMSI catcher (International Mobile Subscriber Identity) technology to trace people's locations, Sim card or telephone number. This method is controversial, however, as it can lead to interference and malfunctioning affecting people not involved in the investigation.

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<sup>101</sup> Bill to amend the Code of Criminal Procedure, the Criminal Code and a number of other acts to extend the options of investigation and prosecution of terrorist crimes. Dutch parliament, see Kamerstukken II, 30 164.

Working document 1 mentions a new investigation technique, i.e. 'police observation', whereby information is collected on suspects or people who have been in contact with suspects. By means of information collected during police checks, these individuals are localised where possible. This type of investigation may be applied for for a 12-month period.

#### *France*

Searches may now be carried out in the absence of the persons involved or their counsel. By Act of January 2006 (*Loi n°2006-64 du 23 janvier 2006*) observation by means of camera and video monitoring is permitted by the government, legal entities and shops on the condition that it covers only the business' or buildings' immediate vicinity or that the shop is a target in a terrorist attack. Recordings must be saved for at least one month and may be examined by the *Police National* and the *Gendarmerie* upon request.

#### *Italy*

Italian law provides for the storage of telephone contact data for 24 months. Individuals are obliged to show valid ID when buying a telephone or Sim card. Data on Internet communication must be stored for thirty months for investigation purposes. A note in the working document on this scheme refers to sources that suggest that this may be violating privacy legislation. Telephones of persons suspected of terrorism may be bugged. Saliva or hair samples may be taken for DNA identification of terror suspects.

#### *Spain*

Spanish law provides for the obligatory retention of telephone and Internet data for 12 months. This information may be used for both terrorist and criminal investigations. Arrangements have been made to safeguard personal details.

#### *United Kingdom*

As set out in the introduction to this paragraph, the report by the Council of Europe refers to the use of special methods of investigation in all countries. In addition, investigation services in the United Kingdom have the power to enter a house without authorisation from the resident, to search the premises and to confiscate goods for further investigation.

#### *United States: Patriot Act*

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA-PATRIOT) Act, in short the Patriot Act, was drawn up in a matter of weeks following the events of 11 September. It was introduced on 26 October 2001. The emphasis in an investigation is shifted from crimes already committed to *proactive* actions. This has made it much easier for the FBI to gain permission to bug certain individuals and to carry out searches and 'look-in operations'. It has also become possible to demand disclosure of personal data from institutes including hospitals, libraries and hotels. The flow of information between banks and the government on financial transactions has been expanded and transactions with 'shell banks' (banks that have no physical place of residence with offices and staff) are not permitted.

The Patriot Act is an example of a policy that can lead to tensions between defence against terrorism on the one hand and the protection of civil liberties on the other.

According to working document 5, part of the measures came under criticism as the Act violates civil freedoms and privacy, while it is not actually clear if it does promote national security.

#### *Other EU countries*

According to working document 7 *Swedish* law comprises an Act that stipulates that the judge may approve the interception of (tele)communication if it serves to investigate whether or not a foreign national or an organisation to which this national belongs, is planning terrorist offences.

In *Finland* the police have no access to so-called *call-associated data* and phone tapping is not permitted for unveiling preparations for terrorist offences. The sentence imposed on the preparation of terrorist offences is too low for this.

In *Cyprus* the interception of private communication is not permitted, as this is regarded a violation of the right to privacy.

### **3.11.2 Extension of options for preventive detention**

The issue of preventive detention is characterised by considerable variation in the laws applicable, as each country has its own legal system with its own characteristics.

#### *Detention without concrete suspicion*

In the Netherlands it is not possible to arrest and detain people without concrete suspicion. Persons may only be stopped if there is a reasonable suspicion of guilt. Under Dutch legislation individuals may be detained for up to 10 days, even if there are no 'serious objections'. By law, the inspection of pleadings and other documents may also be postponed. According to the government this is permitted under the stipulations of the ECHR, which refers to a 'suspicion' based on which a person may be detained<sup>102</sup>. In the Netherlands this must involve a suspect, i.e. a person in respect of whom based on facts or circumstances there is a reasonable suspicion of guilt of having committed a punishable offence (Section 27 subsection 1 Code of Criminal Procedure).

In the United Kingdom it is possible to stop and detain individuals without concrete indications. This means that no suspicion of guilt of any specifically punishable offence is required. In principle, detention without concrete suspicion is possible for a maximum of 48 hours. Upon expiry of this period, a court authorisation may enable a decision to extend detention without concrete suspicion by a maximum of 7 days (including the 48 hours of stop and arrest). This court authorisation relies on two conditions. First of all the court must be convinced that the extension is necessary to collect new evidence on the offence or to safeguard any existing evidence. The court must also be convinced that the investigation is progressing. The decision to extend detention after 48 hours is taken in a court session, in some cases in the absence of the suspect or his or her counsel. Under the law the suspect and his or her counsel may be refused access to the data based on which the request for extension is made.

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<sup>102</sup> Dutch parliament, see Kamerstukken II, 30164 no 12, Extension Options to Investigate and Prosecute Terrorist Crimes Act.

### *Preventive detention*

Preventive detention in the Netherlands starts following the arrest. Custody for interrogation purposes is restricted to a maximum of 6 hours. Preventive detention comprises police custody and pre-trial detention. A suspect may be held in police custody for a maximum of 3 days (in urgent cases this may be extended by 3 days) and only based on a reasonable suspicion of guilt (as per Section 27 subsection 1 of the Code of Criminal Procedure). The pre-trial detention, which follows the police custody, may take place if it is apparent from facts and circumstances that there are serious objections in respect of the suspect. While serious objections are still required for taking terror suspects into police custody (first phase of the pre-trial detention), this may be changed in the near future. The Bill Extension Options to Investigate and Prosecute Terrorist Crimes (*Wet verruiming mogelijkheden tot opsporing en vervolging van terroristische misdrijven*) suggests that in future a reasonable suspicion of guilt should be sufficient to take a person suspected of terrorism into custody.

### *Germany*

Germany has no special stipulations for preventive detention without charge in terrorist cases. Section 129a, however, may serve as grounds to detain suspects preventively. Since the introduction of this section, the scope of the act has been expanded. Besides individuals in respect of whom there is a strong suspicion of murder (or genocide), persons who are accused of setting up or of being members of a terrorist group may be remanded in preventive detention. Persons who have been convicted or who are suspected of being members of a terrorist organisation, or if there is an immediate danger to the lives of others, may be subjected to restrictions regarding the communication with their lawyers and associates for a period of 30 days.

As in the United Kingdom, the (previous) government in Germany proposed to legitimise detention of dangerous terrorists without proof for crimes committed previously. While this proposal has been withdrawn by the new government, it has been replaced by a proposal to make punishable certain indicators of 'posing a danger', including a visit to a terrorist training camp. Albrecht (working document 1) states that there are three approaches in considering to take out dangerous persons (with preventive detention being one method): first of all introduce a method to establish the degree to which a person is dangerous, secondly draft sentences for acts that can be deemed an indication of posing a danger and third, reducing the onus of proof<sup>103</sup>.

### *France*

Under the new law (*Loi n°2006-64 du 23 janvier 2006*) police custody of terrorist suspects is restricted to a maximum of 6 days if there is a serious risk of a terrorist act in France or abroad, or based on essential and urgent regulations resulting from international cooperation<sup>104</sup>. For suspects of other offences than terrorist offences, police custody is 4 days maximum. Terror suspects may be questioned for 6 days without a lawyer being present and are not informed of the right to remain silent. After 96 and 120 hours of detention respectively the suspect may ask

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<sup>103</sup> The debate on this issue is also about the idea of a criminal law aimed at 'enemies' (*Feindstrafrecht*). This continues to be a point for debate, according to Albrecht (working document 1).

<sup>104</sup> Translation of 'un risque sérieux de l'imminence d'une action terroriste en France ou à l'étranger ou que les nécessités de la coopération internationale le requièrent impérativement'.

to consult his lawyer. Even if this request is honoured, the counsel will not have access to the case file. In addition, under the law it is possible to refuse the suspect to inform others of the arrest for 4 days. After these 4 days a person must be informed of the detention at the request of the suspect.

### *Spain*

The standard time limit of 72 hours may be extended by 48 hours if it concerns a person suspected of a terrorist crime (the preventive detention is therefore restricted to a maximum of 5 days). During this time the suspect may be isolated from the outside world, be kept *incommunicado*. If after this time the investigating judge decides to commence legal proceedings against the suspect, he will order preventive detention and the suspect is transferred from *police custody* to *judicial custody*. During this period the suspect may be shielded from the outside world for a maximum of another eight days.

### *United Kingdom*

In the United Kingdom it is possible to detain a person without charge who has been arrested under a counterterrorism Act for 14 days as a preventive measure. In the *Terrorism Act 2006* which first entered into force on 30 March, the maximum preventive detention without charge has been extended from 14 to 28 days, after a proposal by the government to allow this form of detention up to 3 months had been rejected by the House of Commons. This proposal was based in part on a document by the Metropolitan Police, which argued the need for detention of certain suspects without charge for a longer period<sup>105</sup>.

### **3.11.3 Witnesses and crown witnesses**

#### *Witnesses*

Since witnesses in serious cases, including terrorism cases, quite often feel intimidated, it is important that measures be taken to protect them. There are several ways to realise such witnesses protection. Before a case goes to trial in France it is possible to file records by reporting officers in terrorist cases ‘under a number’ rather than under their real name. During the court session, too, reporting officers are able to give a statement ‘under a number’<sup>106</sup>. For the protection of the rights of the suspect it has been determined that no conviction is permitted based solely on records drawn up ‘under number’, if the identity of the reporting officer(s) is (are) not revealed at the first request to the president of the relevant court. The examination of witnesses in complete anonymity and being asked questions by means of closed circuit television applies only if the witness would otherwise expose himself to serious risk. These measures apply to (very) serious offences only.

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<sup>105</sup> The relevant document seems to have been removed from the Home Office website, but is still available on the Internet. See for example: [http://www.spy.org.uk/spyblog/2005/11/andy\\_haymans\\_letter\\_trying\\_to.html](http://www.spy.org.uk/spyblog/2005/11/andy_haymans_letter_trying_to.html).

<sup>106</sup> This appears from *Loi n°2006-64 du 23 janvier 2006*.

Various EU countries provide the option of a witness protection programme in terrorist cases. Programmes like these apply mostly to crown witnesses and Dutch legislation also provides for these. Recently it became known that two witnesses in a terrorist case were included in such a programme<sup>107</sup>.

#### *Crown witnesses*

Dutch law includes a crown witness scheme, or the Commitment act to witnesses in criminal cases Act<sup>108</sup>. Under this law, the Public Prosecutor and a suspect of a punishable offence may make specific arrangements in order to obtain a witness statement in a criminal case against another suspect. In exchange for the witness statement, the suspect's sentence is reduced.

Crown witness schemes are in place in different EU countries. In most cases suspects are offered sentence reduction in exchange for their cooperation. Other options include suspension of all criminal proceedings, offering protection and a residence permit, temporary or otherwise.

#### *Germany*

German law comprises a crown witnesses scheme for specific offences: criminal and terrorist organisations, money laundering and drug trafficking. An evaluation brought to light that the scheme only has limited added value in the investigation of these offences. The scheme, however, was also criticised from a more principal point of view, whereby lawyers and part of the academic world argued that rewarding the cooperation of suspects in law enforcement and investigations is principally incorrect.

Following a strong lobby, a general crown witness scheme is now being drawn up. Typically, the 'deal' must be made before a decision is taken whether or not proceedings against the suspect/crown witness are commenced.

#### *France*

Here too, individuals who have committed a terrorist crime qualify for a reduction of their sentence when they have helped stop a terrorist crime or have helped to prevent victims. In addition, they are expected to testify against any other offenders. In France a sentence may not be imposed in case of an attempt to commit a terrorist crime and the person involved has helped prevent the terrorist crime and, in addition, is willing to testify against any co-perpetrators.

#### *Italy*

The Act on people cooperating with justice ('legge sui pentiti') regards persons that are part of a criminal organisation who in exchange for assisting the Justice Department may qualify for reduced sentences. As a terrorist may be regarded part of a criminal organisation, this act also applies to terrorists. In Italy foreigners who cooperate with the authorities may obtain a temporary, or otherwise, residence permit.

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<sup>107</sup> This concerns the Piranha case in which two people testified against suspected members of the alleged terrorist organisation 'the Hofstadgroep' (Volkskrant 30 March 2006 'Piranha getuigen duiken onder').

<sup>108</sup> The Witnesses in Criminal Cases Guarantees Act became effective on 1 April 2006 officially (Bulletin of Acts, Orders and Decrees 2005, 254). It was preceded by the Temporary Instruction witnesses in criminal cases Guarantees which was based on the Act of 12 May 2005.

### *Spain*

A crown witness scheme is available under Spanish law. The Spanish courts are free to decide on the sentence reduction.

In *Luxemburg* exemption from punishment may be granted when a person informs the authorities that a terrorist-related offence is being prepared or reveals the identity of a person involved in this scheme before an attempt is made to commit a terrorist-related offence and before the acts have commenced. The same applies to individuals who are guilty of participation in a terrorist group and who inform the authorities of the existence of the group and reveal the names of the members, before an attempt is made to commit a terrorist offence and before the acts have commenced.

#### **3.11.4 Use of information from intelligence services in court**

A Dutch bill to amend the Code of Criminal Procedure arranging the interviewing of protected witnesses and a number of other issues. The *Wet Beschermde Getuigen* (protected witnesses, 29743) is being prepared.

Various working documents refer explicitly to the ban on the use of *intelligence* if the source is not revealed. Working document 1 details how German intelligence services are justified in refusing staff to testify in criminal cases, but the information may not be used as evidence.

Section 108 of the Terrorism Act 2000 in the United Kingdom arranges for the use of ‘hearsay evidence’ that is not allowed in ordinary criminal cases. Testimony in these cases must be given by high-ranking police officials (from the rank of superintendent upwards, which is comparable to the Dutch chief inspector). This section obviously aims to allow information coming from ‘intelligence’ in court. The *reviewer* Lord Carlile of Berriew (see par. 2.5) is of the opinion that while the quality of the information of the intelligence services is very high, he is very happy that this scheme has not yet been used and he therefore pleads for its withdrawal<sup>109</sup>.

### **3.12 Administrative measures**

#### **3.12.1 Restricting people in their options and liberties**

##### *Restricting people in their options as regards their freedom of movement*

The Dutch Bill Administrative Measures National Security Act (*wet bestuurlijke maatregelen nationale veiligheid*) aims to present the government with tools in the interest of national security and to prevent and combat terrorism. These tools are available to take action against natural and legal persons if all criminal proceedings have been exhausted<sup>110</sup>. The key points of this bill comprise the following measures: persons who based on facts and circumstances can be associated with

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<sup>109</sup> Lord Carlile, Report on the Operation in 2005 of Part VII of the Terrorism Act 2000. See: [www.nio.gov.uk/report\\_on\\_the\\_operation\\_in\\_2005\\_of\\_part\\_vii\\_of\\_the\\_terrorism\\_act\\_2000.pdf](http://www.nio.gov.uk/report_on_the_operation_in_2005_of_part_vii_of_the_terrorism_act_2000.pdf).

<sup>110</sup> Dutch parliament, see *Kamerstukken II 2004/05, 29 754, no 5*.

terrorist activities or their support, may be imposed any of a range of measures to restrict them in their freedom of movement. The measures may concern an area restriction (restriction to be near certain objects or certain parts of the Netherlands), a person restriction (restriction to be near certain persons) and an obligation to report (obligation to report periodically to the chief of police in the place of residence). In addition, the bill comprises stipulations that allow for the refusal or withdrawal of subsidies, permits or licences to administrative bodies if the application, the reception of the subsidy or the licensee may be associated with terrorist activities or their support based on facts and circumstances and there is a serious risk that the permit, subsidy or licence will be used for terrorist activities or their support<sup>111</sup>.

An Act has become operational in the United Kingdom that allows administrative measures to be taken against individuals suspected of terrorism. The *control orders* replace a stipulation from the *Anti-Terrorism, Crime and Security Bill 2000* enabling the detention of 'foreign nationals' suspected of terrorism and against whom there is insufficient criminal evidence and who cannot be deported for an undetermined period without charge or legal substantiation. The *Law Lords* deemed this stipulation to be in violation of the *Human Rights Act*, and it was repealed<sup>112</sup>. The *Prevention of Terrorism Act 2005* defines control orders as: '*an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism*'. Such measures ('obligations') may be imposed on individuals suspected of being involved in activities related to terrorism, regardless if it concerns a British national or a foreign national and whether the terrorist activity is national or international. As a person poses a more serious risk for national security, more drastic measures may be regarded necessary<sup>113</sup>.

There are two types of control orders. First there are the control orders that infringe the right of freedom as described in Section 5 of the ECHR. These control orders are referred to as *derogating control orders*, as they require derogation from Section 5 of the ECHR. Derogation from this international-legal section is possible in the United Kingdom as it invokes Section 15 ECHR 'derogation in the event of emergency'. The second form of control orders is defined as *non-derogating control orders*, as they do not require derogation from Section 5 of the ECHR.

In general, control orders are imposed by the court following an application by the Minister of Foreign Affairs. Non-derogating control orders, however, may also be imposed directly in 'emergency cases' by the Minister of Foreign Affairs if he is of the opinion that there are 'reasonable grounds' to suspect a person of (previous) involvement in terrorism-related activities and when he considers these necessary to impose. These measures must be put to the court within seven days after imposing, however. Non-derogating control orders may be imposed for a maximum of twelve months, after which this period may be extended each time. Derogating control orders may be imposed for a maximum of six months and be extended once only.

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<sup>111</sup> See: Council for the Judiciary (2005).

<sup>112</sup> House of Lords [2004] UKHL 56.

<sup>113</sup> First Report of the independent reviewer pursuant to section 14(3) of the prevention of terrorism act 2005.

To be able to impose a derogating control order, the following legal procedure is followed. The person involved does not necessarily need to be aware of such a procedure in the run-up to the imposition of a derogating control order. The minister submits the application for imposing such a measure with the court. The following sessions then take place:

- a *preliminary hearing*; during the hearing it is established whether or not there are grounds to impose a derogating control order. There are grounds to impose such a measure if there is sufficient evidence to show that the person involved is involved in terrorism-related activities. In addition, there must be reasonable grounds to assume that the measure is essential to protect the public against the risk of terrorism. Finally, there must be a certain degree of 'public emergency', subject to which the infringement of the right to freedom is permitted.
- b *full hearing*; during this hearing the decision to impose a derogating control order is confirmed. The above requirements (*preliminary hearing*) for imposing a derogating control order are rigorously tested during this hearing, as the court must be convinced of the involvement of the relevant person in activities related to terrorism.

While a distinction is made between the two forms of control orders based on whether or not such measures violate Section 5 ECHR, the *independent reviewer*, Lord Carlile of Berriew, indicates that the distinction is vague. Many of the measures that are referred to as *non-derogating control orders*, such as an eighteen-hour curfew, are very much like house arrest, which is considered as a *derogating control order*.

Control orders may be based on non-disclosed information that is not accessible to the persons involved and their lawyers. At the request of the Minister of Foreign Affairs, the court may decide that for reasons of national security it may be undesirable that the evidence is disclosed to the relevant person and his lawyer and for the same reason the court may also decide that the accused and his lawyer may not be present during the session. In such cases a so-called *Special Advocate*<sup>114</sup> is appointed. A *Special Advocate* is an independent lawyer trained for these cases who is permitted to attend the closed sessions held in camera. However, contacts between the party involved on the one hand and his lawyer and the *Special Advocate* on the other hand are highly restricted. Moreover, the Special Advocate is not permitted to divulge on the contents of the non-disclosed information.

#### *Professional restrictions*

As appeared in paragraph 3.10, France, Spain and Germany may impose professional restrictions on persons. Persons in these countries may be removed from the right to carry out certain public positions, if they are part of, or associated with any terrorist organisation. Researchers with foreign backgrounds in the United Kingdom are sometimes excluded if there are indications that they can be associated with terrorism<sup>115</sup>. In the Netherlands, too, a bill is being discussed covering professional restrictions<sup>116</sup>.

<sup>114</sup> See Lord Carlile of Berriew (2006) 'First Report of the independent reviewer pursuant to section 14(3) of the Prevention of Terrorism Act 2005 and Amnesty International (2006) United Kingdom Human rights: a broken promise.

<sup>115</sup> Glees and Pope (2005). See also: The Guardian, July 19, 2005 Foreign scientists barred amid terror fears.

<sup>116</sup> Dutch parliament, see Kamerstukken II 2005/06, 29 754, no 60.



## 4 Conclusions and discussion

### 4.1 Restrictions of this study

The commission for this study initially concerned drawing up a first inventory of measures taken in the field of radicalisation and combating terrorism and the considerations and assumptions involved. In addition, information was to be collected, where available, for the implementation and evaluation of the policy. The study covered five European countries (Germany, France, Italy, Spain, the United Kingdom) and the United States.

The project description defined nine policy fields for possible introduction of measures aimed at radicalisation, extremism and terrorism. This selection was made in consultation with the supervisory committee and the NCTb. Despite this demarcation, the study scope was very broad indeed.

Supervised by the WODC based on the project description (see appendix 1), this study was carried out with input from research institutions in the countries concerned. The WODC carried out its own research on the situation in the United Kingdom, interviewing people in the country itself. In some cases this produced a different type of information than the information collected through written and Internet sources, as was the case for other countries.

Notwithstanding the careful data collection procedure, the inventory is not complete, i.e. it is not exhaustive. However, we are convinced that the key lines in the counterterrorism policy of the five EU countries and the United States are all covered at the time the data collection was concluded (in most cases 1 February 2006).

In addition, the Radboud University Nijmegen drew up an overview of legislation in place in Germany, France, Italy, Spain and United Kingdom, which the WODC fleshed out for the 'other countries', based on a limited number of sources. The notion of 'counterterrorism legislation' is difficult to define. In some countries counterterrorism legislation are merely amendments to acts in a range of fields, whereby special conditions are created for existing offences and procedures within the framework of terrorism (and the fight against terror). Albrecht refers to 'cross-sectional legislative activities' (working document 1). The Nijmegen team opted to work out a limited number of relevant issues, focusing particularly on criminal proceedings. This overview was completed with a number of additional measures taken from the — limited — WODC study into legislation in the 'other' EU countries. It appears that it is rather uncommon that arrangements made in these countries are absent in the five countries from the study by Aksu et al (working document 6)<sup>117</sup>. The subject of 'legislation' discussed in this study, as laid down in working documents 6 and 7, on which this report is partly based, cannot claim to be complete either. What can be argued, however, is that all essential aspects of said legislation themes are covered.

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<sup>117</sup> The study is also restricted by the fact that legislation in the United States has not been included.

## 4.2 Lessons learnt

All countries involved in this study have experienced terrorism. This is a point that has been dealt with in the working documents, with the aim to see if lessons could be drawn for today's situation. The first priority in most countries is to tackle the emergence of Islamic radicalism alongside extreme rightwing movements and developments such as extreme animal liberation movements. The question is whether these experiences from the past are used to build on, or that an entirely different course is taken.

The working documents nor chapter 2 provide an unambiguous answer to this. This can be explained in part by the fact that the restricted literature on which the working documents relied for information on experiences in the nineteen seventies and eighties proved inadequate. On the other hand, it may be possible that previous experiences are rather ignored in the development of new policies, or that this connection is not often made explicit<sup>118</sup>. It is not the first time that administration experts and policy officials have come to the conclusion that governments' learning capacities are not always very extensive<sup>119</sup>.

It seems as if there are many lessons that may be learnt from the issues discussed. For example, the approach which the German government took in the nineteen seventies towards 'sympathisers of terrorists' deserves a further look. What are the agreements and what are the differences when comparing this approach with the risk of radicalisation of population groups as is currently being discussed? France used an amnesty scheme to largely paralyse Action Directe. What are the conditions subject to which these schemes can be effected or not? And is *jihadi* terrorism ('multinational', 'religious') so very different from previous acts of terrorism (aimed at 'national' and 'political' targets), as has been suggested? There also seems to be a continuing line between the experiences gained in 'Rasterfahndung' (datamining) then and now, particularly in Germany.

## 4.3 Discussion of the findings on the policy fields

### 4.3.1 *Prevention of radicalisation and recruitment*

All countries investigated in the study recognise the phenomenon of radicalisation of young Muslims in particular (and the role the Internet plays in this). Some reports focus on the more general interpretation of the problem. Besides the Netherlands, the United Kingdom in particular seems to be devoting a great deal of policy attention to radicalisation. A somewhat detailed concept in the United Kingdom distinguishes between structural, motivational and environmental factors. The various government services involved in the United Kingdom try to take into consideration the impact any measure may have on relationships with the Muslim community.

The actual point of interference in the process in the countries investigated in the study also distinguishes the countries' approach to radicalisation. Some European

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<sup>118</sup> Some staff at the London Home Office interviewed indicated the Northern Ireland experiences were not relevant at all to the current situation.

<sup>119</sup> See for example: Leeuw and Sonnichsen (1993).

countries, such as the United Kingdom and the Netherlands, clearly aim to prevent radicalisation, focusing on early interference in the process. According to the working document, the United States opts for a broad interpretation of its freedom of speech, focusing on preventing *recruitment* for terrorist acts. The United States and the United Kingdom have also developed an international approach to radicalisation, based on the assumption that improving poor living circumstances and solving local conflicts may help reduce the breeding ground for extremism.

The measures taken are based on certain ‘work assumptions’ in respect of mechanisms that can be influenced by measures combating radicalisation and terrorism, or to carry out an active ‘damage control policy’ respectively. Many countries are shown to be introducing measures that are very similar. Par. 3.1, for example, found that all countries have Islamic councils, and that the working documents suggest that these councils can play a role in the prevention of radicalisation of Muslims. It is worth looking deeper into these measures and the similarities and differences in the assumptions on which the measures are based. One angle is to see how ‘solid’ the so-called ‘disaffection hypotheses’ is. This argument finds that when a policy causes too much ‘disaffection’ in Muslims, this will only inspire radicalisation and violence, rather than reduce it. A relevant conclusion from this hypothesis could be that investing in Muslim communities creates social support.

Data on the United Kingdom were gathered by the WODC itself. It included interviews with staff of the Home Office which showed that within the framework of the prevention of radicalisation an attempt was made to map out the impact of the counterterrorism policy *ex ante* by means of *Community Impact Assessments*. Impact assessments are not new and no more than a specific form of ‘effect evaluations’. The environmental effect report, which was first published in the Netherlands more than 20 years ago, is another form of impact assessment. Its application in this field is new, however. It was not found to be used in any other country. It is not impossible, however, that when delving deeper into the subject, more assessments will be found. After all, the working documents were drafted mostly based on written sources. It seems relevant to carry out a further study into the method and elaboration of community assessments. The focal point in this should be the conditions needed to avoid undesirable side effects resulting from the ‘disaffection’ policy, among Muslim minorities as well as other population groups.

#### **4.3.2 Information to the general public**

Large differences were found to exist in the field of *information*. But are these differences a reflection of different policy assumptions? In Germany the information to the public with regard to terrorism is rather *low profile*: possible attacks are discussed with other possible disasters. The United Kingdom has a special website with lots of information, asking the public to be expressly vigilant and to inform the authorities in case of any unusual activities. As in the Netherlands leaflets were distributed in the United Kingdom with the information that was also contained in the Website. Other mass media statements were also used (‘commercials’). Together with the Netherlands the United Kingdom therefore seems to have the most advanced information policy of all the countries

studied. However, it is not inconceivable that there are other activities not covered in this study.

A dilemma in the information policy is that while extensive information may promote support from the population, it may also help the terrorists themselves. Experience with information in the various sectors and theory building could be used to improve the effectiveness of the campaigns.

For now, our search has not revealed any specific assumptions regarding a change in cognitions (thinking, norms and knowledge) through 'information diffusion'. It would be sensible to study this further, including past experiences that are dealt with in this report (e.g. German experience with 'sympathisers' and British experience with 'media policy' in Northern Ireland). The knowledge about the effects of communication and information policy may be enhanced by using the experiences of the past 20 years in this field<sup>120</sup>.

#### **4.3.3 Institutional facilities and coordination**

Most countries have provided institutional facilities for the coordination of their counterterrorism policy. In some countries the cooperation concerns investigation and intelligence services, while other organisations also are involved elsewhere. By far the most extensive operation in this field has been the creation of the Department of Homeland Security (DHS) in the United States. In most other countries new *multi agency* institutes have been created with similar objectives, save for the United Kingdom, where the Home Office is responsible for the coordination.

As far as known, studies are available for the US DHS only, to which reference is made in working document 5, drawn up by criminologist Petrosino.

The first reports are not all favourable. For example, there are said to be many problems from a conceptual and organisational point of view. The only conclusions that can be drawn from this is that it is vital to clearly map out the objectives which these organisations aim for and how, and later investigate what has been achieved and at what cost<sup>121</sup>. Attention to the efficacy of the organisation and the control of combating terrorism should therefore be high on the agenda. Here, too, lessons can be learnt from previous experiences with centralisation/decentralisation and recentralisation in government services.

#### **4.3.4 Intelligence activities**

A development found in most working documents concerns the increased reliance on *technological facilities* to combat terrorism, which particularly involves methods of identifying and localising terrorists. In addition to the introduction of, for example, identity papers with biometric characteristics, the emphasis is particularly on developments in ICT technology. Databases are created with linked data on individual civilians, and advanced techniques of data reduction (dragnet research, datamining, Rasterfahndung) are used to try and trace terrorists. In addition to the question if this approach is actually effective (do they actually

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<sup>120</sup> See for example Kruisbergen (2005).

<sup>121</sup> Obviously, this also applies to coordination at the European level, supervised by Dutch coordinator Gijs de Vries.

reduce the chance of attacks?), another question concerns how security can be promoted without impacting greatly on the privacy of the large majority of registered people.

According to working document 5, it became clear in the United States that measures to determine and register all sorts of personal details resulted in a tidal wave of data, of often poor quality, in which it is difficult to find patterns.

In the field of intelligence activities, there is a general call for better cooperation and exchange of information between countries and between services within these countries. In a European context, too, initiatives are taken in this field, with the aim to establish a free exchange of information between investigation services and the clearing of obstacles that play a role in this. The Situation Center (SitCen) in Brussels makes analyses of combined data from the various Member States. Further studies into the developments in this field are called for. Issues targeted include: does it promote investigation; are results found that weren't looked for ('random hits') and how are these used, and are the rights of the individuals on whom information is being collected sufficiently taken into account?

#### **4.3.5 Protection of critical infrastructure**

The protection of the critical infrastructure in the countries studied is arranged by means of legislation and institutional facilities. The working document on France did not contain any information. In all countries on which information is available, the government defined the infrastructure and businesses that required special attention.

An interesting aspect is that in Germany and the United Kingdom there are signs that the government aims to bring about cooperation between the government and industry in protecting the critical infrastructure. The United Kingdom operates a detailed strategy aimed at securing the continuity of vital businesses. Special measures have been taken in the United States in this respect, for example in cooperation with the chemical industry.

#### **4.3.6 Legislation**

A first conclusion that can be drawn with regard to *legislation on counterterrorism*, is that the fight against terrorism using legal instruments is more or less the same in all countries. This is the result, amongst other things, of international arrangements implemented in national legislation. Examples are resolution 1373 of the UN Security Council which obliges Member States to freeze terrorists assets, or the framework decree on combating terrorism dated 13 June 2002, which a large number of EU Member States have implemented in their national legislation. While there are many similarities between countries in the fight against terrorism, countries may vary in certain areas. The United Kingdom in particular distinguishes itself in the EU by its emphasis on administrative measures ('control orders', which invokes an exemption clause contained in Section 5 of the ECHR). Take for example the fact that suspects may be detained without clearly defining what they are suspected of and by imposing an obligation to inform the authorities in the event of a suspicion that another person is guilty of a terrorist crime, whereby the failure to observe this obligation has been made punishable. Below we comment on a number of legislation issues also dealt with in this study.

The essential question with regard to legislation is the question whether or not it is effective. We have not yet been able to find a great deal in this field, simply because relevant legislation is still in its infancy. Moreover, it is always difficult to evaluate legislation for its efficacy, which applies perhaps even more to legislation in the field of counterterrorism<sup>122</sup>.

Combating *terrorist finance* is a point for attention in all countries. This is in part the result of resolution 1373 of the UN Security Council. Following this resolution a list has been published with the names of persons and organisations whose assets must be frozen and with whom no business transactions are permitted. Combating terrorist finance has also led to new criminal provisions. Many countries have instituted special bodies to combat terrorist finance.

The ‘management’ of lists of terrorists and terrorist organisations is a possible point for attention: how does a one get on a list and how can a person be taken off it again?<sup>123</sup>.

Many countries combine criminal measures with *aliens law related* measures in the fight against terrorism. These measures include revocation of double nationality, deportation and the refusal of access to the country. An important point within this framework is the registration of aliens. This is a common and widespread procedure in Germany and the databases can be accessed by intelligence services for dragnet research. The United States, too, has an extensive registration system of people entering the United States and their activities. These measures aim to prevent persons with terrorist intentions from entering the country, to ‘disturb’ their activities and to enhance their chance of being caught if they do manage to cross the border and unfold their activities. As is the case for all forms of registration of certain population categories, these measures also affect innocent people, which raises the question of what exactly is the right balance between security and freedom. It is not always easy for policy makers to strike a balance that is supported across society<sup>124</sup>. The evaluation of these measures will need to look specifically at their efficacy: does the policy help in keeping terrorists and recruiters outside? Another key issue concerns any harmful side effects in respect of freedoms and human rights.

Inciting terrorism seems to be punishable in all countries, either under general or under specific stipulations. The glorification of terrorism (‘apology’) is punishable in some countries, usually under general stipulations. Only a few countries have included the glorification of terrorism as a specific stipulation in their legislation. Incidentally, the discussion of this legislation (par. 3.10.2) showed that the

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<sup>122</sup> See: Leeuw and de Jongste (2006).

<sup>123</sup> For a critical discussion, read Tappeiner (2005). An example of possible complications: the Dutch mission to Afghanistan may not cooperate directly with the local governor, as he appears on a UN terror list, while his loyalty to the new government should be above any doubt. Volkskrant, 5 May 2006. Another example is the discussion on excluding members of the Hofstadgroep from banking and insurance services based on regulations combating terrorist financing. Lawyers and others (including Afshin Elian) have criticised these measures, of which it is not clear that they help fight terrorism, for being used as a form of punishment without interference from the court.

<sup>124</sup> Critical publications have appeared on the use of aliens-law related policy to fight terrorism, where the issue of whether or not the policy serves the purpose of security is pushed to the background. Saas (ELISE cd rom), for example, made a critical analysis of the French policy on this.

distinction between the concept of ‘incitement to’ and ‘glorification of’ terrorism is not always clear-cut.

Key *special methods of investigation* are used in all of the larger countries investigated and no specific differences between Member States exist. The report by the Council of Europe on special methods of investigation reveals that the full range of methods is also available in the Netherlands. The overview of the ‘other countries’ revealed that some of the ‘other’ EU countries do not permit the use of some methods<sup>125</sup>. A key point in the special methods of investigation regards the requisitioning of personal data.

Crown witness schemes are in place in several countries, and sometimes they are reserved for specific offences. Also, suspects who testify may be rewarded by anything from ceasing all criminal actions to offering a residence permit to aliens willing to cooperate with the Justice Department.

In the end report by the EU ‘peer review’ on counterterrorism, Member States are recommended to consider using ‘intelligence’ as proof in the criminal process. To the extent verifiable in this report, only the United Kingdom has a relevant scheme (‘hearsay evidence’), but this has not yet been used, according to reviewer Lord Carlile. A number of countries are known not to allow the use of information provided by intelligence services as proof, unless the source of the information is revealed, something intelligence services tend to avoid. As is the case for other topics, it is not impossible that some EU countries do have relevant schemes. A further study could shed light on this, and of course on the specific characteristics of these schemes.

National legislation on ‘*preventive detention*’ seems to vary considerably. Detention without concrete suspicion is possible up to 28 days in the United Kingdom. Incidentally, the concept of ‘preventive detention’ does not have the same meaning in all countries, which is the result of differences in the various national criminal processes. A more detailed interpretation of these differences is outside the scope of this study, although it is important to shed light on the variation in regulations found in this field.

As far as known, the United Kingdom is the only country to use both criminal and administrative measures in the fight against terrorism. The first reports by the independent reviewer, Lord Carlile (see par. 2.5), show that the way in which this scheme is used is regarded as positive. A further analysis of this report is recommended, since the Netherlands, too, is discussing a bill for administrative measures against (potential) terrorists in the Lower House<sup>126</sup>. Restricting people in their professions— which can also be regarded an administrative measure — is possible in a number of countries for people *convicted* for terrorism.

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<sup>125</sup> Council of Europe (2005a).

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#### 4.4 Evaluation of counterterrorism policy

The researchers were also asked to report on anything known about the measures described, their evaluation and their effectiveness. This was an open question, as the project description had already stated that it is far too early for most measures to determine if they have met their target. The question did indeed yield only a small number of evaluations which are set out in the working documents and in this report. We assume that this is the result mostly of the fact that little is yet available in this field, rather than that the authors within their restricted scope gave priority to listing the measures themselves. It is expected that material in this field will accumulate, so that a follow-up study will yield more information.

Some authors have pointed out the relevance of attention to implementation in the evaluation of measures. According to Petrosino (working document 5), the United States have a history of many non-implemented recommendations, laws and policy documents, which he says raises the question if there is a lack of political will, or that policy is developed too hastily in answer to heated emotions (working document 5, discussion). This is a classical problem in administrative and policy science: does the *street level bureaucrat*, the police officer, the terrorist fighter, that which is expected of him or her, or - as is often the case in other fields — does he do only part of what is expected or perhaps nothing at all. ‘Policy shapes implementation, implementation shapes policy’, is Wildavsky’s famous statement and it is quite conceivable that such a phenomenon also occurs in counterterrorism policy. Others, too, have referred to the *emergency measures* character of many measures, particularly where it concerns legislation (Bigo, working document 2). The conclusions of working document 3 (by Martina Montauti from Italy) also draw attention to this. All legislation and regulations and policy developed in Italy discussed for the period after 1990 dates from after the attacks of 11 September 2001 and, according to Montauti, calling this ‘emergency’ legislation would not be an overstatement, as it was aimed particularly at drastically increasing and refining the tools available. Little information is available on matters relating to the *implementation* of legislation. Before measures can be effective, they need to be implemented correctly; and the Italian author correctly states that this area offers plenty of room for development.

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# Appendix 1

## Project description

### State of affairs on counterterrorism measures and their effects

Aim of the project:

To obtain an overview of policy, specific measures and legislation with respect to counterterrorism in the EU, the US and Israel, as well as an insight into the efficacy of measures.

This also includes policies aimed at mitigating the process of radicalisation amongst certain layers of the population.

Therefore, the problem definition is twofold:

- 1 Which measures are taken and what legislation is developed with respect to radicalisation, extremism and terrorism and which considerations and assumptions play a role? (part I)
- 2 What is known about the effects and side effects of measures directed at radicalisation and terrorism? (Part II)

Policy context: radicalisation, extremism, terrorism

The Netherlands have taken several policy initiatives directed at counteracting radicalisation and terrorism. Many measures are presently in the process of legislation, others are in the early phase of implementation. Thus, it is too early to assess their wanted and unwanted effects. Nevertheless, knowledge on these effects is urgently needed for the development of the National Counterterrorism Coordinator's (NCTB) Threat Assessment and its policy framework, which is due by the end of 2005. One goal of the study is to make an inventory of the knowledge that has already been developed in other countries.

The project is commissioned and sponsored by NCTB.

Research questions:

Part I.

- What variation exists in the EU, USA and Israel in the formulation, specification and implementation of policies on radicalisation and terrorism.
- How is this connected to the views that exist in the countries as to the causes and backgrounds of radicalisation and terrorism. Which factors are taken to be susceptible for influence through policy measures.
- What specific measures are taken? Which goals are formulated and what resources are employed to reach these goals?
- On which policy assumptions are measures being based? What mechanisms are supposed to make the measures work?
- What is the status of the measures with respect to implementation and execution?

Part II (to be started by the end of 2005 depending on the results of Part I).

- Does knowledge exist on the effects of counterterrorism measures and measures directed against radicalisation?
- If so, what is known on the effects, desired as well as undesired effects?

- Which measures contribute to the counteracting of radicalisation and terrorism; under what circumstances?
- Which measures lead to an *increase* of radicalisation and terrorism; under what circumstances; under what circumstances?
- Which side effects appear? I.e. effects on feelings of safety among the population, on the burden on those who implement the measures, on the public support for the policy.
- What is known on ‘good practices’ in countering radicalisation and terrorism?

A distinction is made between radicalisation and terrorism. It is assumed that radicalisation can occur among certain sections of the population, influenced by a variety of factors. A part of those who radicalise may come to the point that they resort to violent actions. In other words: radicalisation may lead to terrorism. On the other hand, terrorist actions can bring about more radicalisation among wider layers of ‘disaffected’ groups, whether or not they are explicitly aimed to do so. Radicalisation and terrorism may be taken together as one issue (as is common in the Netherlands recently) but both may also be considered as two distinct policy issues.

Although the study is directed at the European and Dutch situation in the first place, it will include experiences from the US and from Israel as well. In USA, a large number of counterterrorism measures have been taken, especially in the period since September 2001. Also, a number of publications has appeared to discuss these measures.

Although the situation in Israel cannot be compared to the European (or American) situation, the study aims at an inventory of Israeli measures that could be adapted to the European context (i.e. experiences with information to the public etc.).

Provisional categorisation of measures:

- 1 Prevention and driving back of radicalisation and the development of extremism among sections of the population.
- 2 Information of the general public on radicalisation, extremism and terrorism.
- 3 Measures in the field of immigration and asylum.
- 4 Granting special competences to police, customs, prosecutors, etc.; their relation with privacy issues and civil rights. (Including Information sharing regulations etc)
- 5 Institutional developments (creating special services, departments...)
- 6 International cooperation and information sharing
- 7 Counteracting financing of terrorist organisations through donations, money laundering, drugs trade etc.
- 8 Security of infrastructure (transportation, industry, information systems...)
- 9 Crisis management: preparation for handling crisis involving terrorist attacks

## Issues for the NCTB terrorism policy project

9<sup>th</sup> December, 2005

We have discussed with NCTB the first drafts we received from the authors in the EU countries.

All the drafts cover a wide range of related to counterterrorism policies in the respective countries. As not all issues are arranged by formal policies or legislation in all countries, we now want to ask all authors to cover all issues on the list below, at least briefly. In that way, we want to achieve a full matrix of issues and countries, with no 'empty cells'.

It is conceivable that some of the issues on the list are not mentioned at present in the draft because there is no articulated legislation or policy in which it is arranged for. If this is the case, please describe the practice in your country. This may often be the case with respect to measures related to prevention radicalisation and extremism, informing the public, etc.

The following list is proposed:

### *Introduction*

- brief description of the development of the ideas on terrorism in the various countries in the last two of three decades. If applicable, please make a link between the present mainly jihadist terrorist threat and earlier radical/extremist/terrorist episodes. If possible, indicate what can be learned from the earlier experiences (i.e. ETA, IRA, RAF, BR, etc.)

### *Legislation issues:*

- formal definition of terrorist offences
- implementation of EU definition of terrorist offences
- newly defined specific terrorist offences (e.g. recruitment, training, preparation... )
- special arrangements for preventive detention without charge in terror cases, with or without contact with lawyers, for how long...
- crown witness/ 'pentiti' legislation, for organised crime or specifically for terror
- arrangements for the use of intelligence in court / use of security service agents as covered or anonymous witnesses

### *Policy areas:*

- 1 *Prevention of and driving back radicalisation and the development of extremism among sections of the population.*
  - policies (documents?) on radicalisation of Muslims through certain mosques, the Internet, prisons?
  - any national frameworks for local policies directed at prevention of radicalisation?
  - stimulating a dialogue between communities (i.e. Muslim councils, organisation of debates/events, etc.)
  - attribution of certain roles to community leaders (i.e. imams etc.) in the prevention of radicalisation

- do policymakers make a connection between integration of minorities and prevention of radicalisation, and if so, how?
  - monitoring of places where radicalisation is thought to be taking place?
  - withdrawal of certain privileges for religious organisations/institutions
  - Does any elaborate policy (document etc) exist in which the means and aims with respect to prevention of radicalisation is explained?
  - Are any measures in place directed at disruption of radicalisation processes?
- 2 *Information of the general public on radicalisation, extremism and terrorism.*
- Are there any campaigns, websites, leaflets etc. in which the national CT policies are being explained and are citizens told how to react, etc.?
  - Does any elaborate policy (document etc) exist in which the means and aims with respect to informing the public is explained?
- 3 *Measures in the field of immigration and asylum.*
- Is any specific policy being developed, directed at radicalisation/terrorism, to prevent certain (categories of) persons from entering the country, or to deport persons from the country for reasons of radicalisation/terrorism?
  - Is any specific policy developed on the permission of residence for (specific categories of) religious leaders ?
- 4 *Granting special competences to police, customs, prosecutors, etc.; their relation with privacy issues and civil rights.*
- Any arrangements for tracing (potential) terrorist through combining files with personal data? Data mining?
  - Is deployment of Joint Investigation Teams arranged for?
- 5 *Institutional developments (creating special services, departments...).*
- Any recent new structures for coordination of ct efforts? Which policy goals were formulated?
  - Are new arrangements created for the sharing of information between services, local, national, international?
  - Were new CT units created among the security services?
- 6 *International cooperation and information sharing.*
- What relevance is attached to European cooperation in the field of CT? How are the European policies translated into national policies?
  - Which UN Conventions have been ratified and implemented? Has the country reported to the UN on CT policies in the last three years?
  - Are bilateral relations with specific countries developed related to CT in the Arab world?
- 7 *Counteracting financing of terrorist organisations through donations, money laundering, drugs trade etc.*
- Is there a national list of terrorist organisations and individuals, have certain organisations been banned or added to EU lists?
  - Have policies been developed with respect to transparency of charity organisations?
  - Are policies developed in relation to the financial flows related to Dawaa activities?

- Has there been any change in relation to restrictions on confidentiality of banking information in the light of CT policy?
  
- 8 *Security of vital infrastructure (transportation, industry, information systems...).*
  - Is any alerting system on risk of terrorist attacks operational or planned?
  
- 9 *Crisis management: preparation for handling crises involving terrorist attacks*
  - What arrangements are in place for decision-making during the first hours/days following a major attack ?
  - What specific arrangements are in place for crisis management in case of a terrorist attack?

