الأمم المتحدة

S/2001/1264

مجلس الأمن

Distr.: General
27 December 2001
Arabic
Original: French

رسالة مؤرخة ٢٧ كانون الأول/ديسمبر ٢٠٠١ موجهة إلى رئيس مجلس الأمن من رئيس لجنة مجلس الأمن المنشأة عملا بالقرار ١٣٧٣ (٢٠٠١) بشأن مكافحة الإرهاب

تلقت لجنة مكافحة الإرهاب التقرير المرفق الذي قدمته هولندا تنفيذا للفقرة ٦ من القرار ١٣٧٣ (٢٠٠١) (انظر المرفق).

وسأغدو ممتنا لو تفضلتم بتعميم هذه الرسالة ومرفقها بوصفهما وثيقة من وثائق مجلس الأمن.

(توقيع) جيريمي **غرينستوك**
رئيس لجنة مكافحة الإرهاب

230102 220102 01-71926 (A)

[الأصل: بالانكليزية]

المرفق

رسالة مؤرخة ٢١ كانون الأول/ديسمبر ٢٠٠١ موجهة من الممثل الدائم لهولندا لدى الأمم المتحدة إلى رئيس لجنة مجلس الأمن المنشأة عملا بالقرار ١٣٧٣ (٢٠٠١) بشأن مكافحة الإرهاب

أتشرف بأن أحيل إليكم التقرير المطلوب بموجب الفقرة ٦ من قرار مجلس الأمن ١٣٧٣ (٢٠٠١). وهو يتضمن تفاصيل التدابير التي اتخذتها مملكة هولندا لتنفيذ ذلك القرار. وأُعد حسب الشكل المبين في الإرشادات الواردة في الوثيقة SC A/2001(6).

ويقدم هذا التقرير الوطني إضافة إلى التقرير الموازي الذي أعده الاتحاد الأوروبي باسم دوله الأعضاء.

وتظل هولندا مستعدة لتقديم أي معلومات أخرى تطلبها لجنة مكافحة الإرهاب بشأن تنفيذ هولندا للقرار ١٣٧٣ (٢٠٠١).

(توقيع) ديرك جان فان دين بيرغ
السفير
الممثل الدائم

الضميمة

تقرير مؤرخ ٢٢ كانون الأول/ديسمبر ٢٠٠١ مقدم من مملكة هولندا عملا بالفقرة ٦ من القرار ١٣٧٣

فيما يلي التقرير المقدم عملا بالفقرة ٦ من القرار ١٣٧٣ المؤرخ ٢٨ أيلول/سبتمبر ٢٠٠١. وهو يتضمن التدابير التي اتخذتها مملكة هولندا[1] تنفيذا لقرار مجلس الأمن ١٣٧٣ المؤرخ ٢٨ أيلول/سبتمبر ٢٠٠١، وأُعد حسب الشكل المبين في الإرشادات التي عمَّمها رئيس لجنة مجلس الأمن المنشأة عملا بالقرار ١٣٧٣ (الوثيقة SC A/20/01 (6)).

ويجب أن يُقرأ هذا التقرير الوطني بالاقتران مع التقرير الموازي الذي أعده الاتحاد الأوروبي باسم دوله الأعضاء.

مقدمة عامة

في أعقاب ١١ أيلول/سبتمبر، وضعت هولندا خطة عمل تتضمن ٤٥ تدبيرا جديدا لمكافحة الإرهاب. وعُرضت خطة العمل هذه على البرلمان الوطني، وستُقدم له أيضا تقارير مرحلية منتظمة بشأن تنفيذها. وترد خطة العمل في مرفق هذا التقرير.

وُضِعت على نطاق المملكة خطة عمل شاملة وتم التوصل إلى اتفاقات بين البلدان بشأن ما يلي:

- تعزيز التشريعات المتصلة بمكافحة الإرهاب؛
- تعزيز التعاون بين إدارات الشرطة وإدارات العدل في البلدان؛
- إنشاء هيكل مناسب يتولى شؤون المعلومات في إدارات الأمن الوطني؛
- تعزيز آليات الرقابة في القطاع المالي.

وتتضمن خطة العمل أيضا جدولا زمنيا واضحا؛ وسيتولى مجلس الوزراء في المملكة رصد عمليتَي التنفيذ والمتابعة. ولا تتوافر حتى الآن ترجمة انكليزية لخطة العمل هذه.

١ (أ) ما هي التدابير، إن وجدت، التي اتُّخذت لمنع ووقف تمويل الأعمال الإرهابية، بالإضافة إلى تلك المدرجة في ردودكم على الأسئلة من ١ (ب) إلى ١ (د)؟

تُقر مملكة هولندا بالأهمية الكبرى لفعالية مكافحة تمويل الإرهاب في مختلف السياقات الوطنية والدولية.

---

(١) تضم مملكة هولندا ثلاثة بلدان مستقلة ذاتيا هي هولندا (أوروبا) وجزر الأنتيل الهولندية وأروبا.

وتتضمن الخطة الوطنية المذكورة في المقدمة العامة ١٤ تدبيرا تتعلق بسلامة القطاع المالي ومنع تمويل الأنشطة الإرهابية. وانطلاقا من هذه التدابير الـ ١٤، عرض وزير المالية ووزير العدل على البرلمان مذكرة مفصلة تتصل بعدة تدابير قائمة ومعتَزمة لزيادة تعزيز سلامة القطاع المالي ومنع تمويل الأنشطة الإرهابية. وترد في المرفق ترجمة لهذه المذكرة.

والتوصيات الخاصة الثماني التي اعتمدتها فرقة العمل للإجراءات المالية المعنية بغسل الأموال في اجتماعها العام الاستثنائي يومَي ٢٩ و ٣٠ تشرين الأول/أكتوبر ٢٠٠١، سيجري تنفيذها في كافة أرجاء المملكة، في أقرب وقت ممكن، حسب الاتفاقات التي توصلت إليها فرقة العمل، وبحلول حزيران/يونيه ٢٠٠٢، على أقصى تقدير. وستقدم المملكة إلى فرقة العمل، قبل نهاية عام ٢٠٠١، التقييم الذاتي المطلوب وخطة العمل لتنفيذ التوصيات الخاصة الثماني. وفي عام ٢٠٠٢، سيعقد على مستوى المملكة اجتماع للخبراء لاستعراض نظام مكافحة غسل الأموال وتمويل الإرهاب والقيام، عند الاقتضاء، بتقديم توصيات لإدخال تحسينات. ومن المزمع أن ينفَّذ البعض من هذه التوصيات عن طريق تدابير وأنظمة تُتخذ على صعيد الاتحاد الأوروبي.

١ (ب) ما هي في بلدكم الجرائم والعقوبات المتعلقة بالأنشطة المدرجة في هذه الفقرة الفرعية؟

يعتبر تمويل الإرهاب جريمة بموجب المدونة الجنائية الهولندية. ويمكن المقاضاة من أجله بثلاث طرائق.

أولا، يعاقَب عليه بموجب المادة ٤٦ من المدونة الجنائية، بوصفه تحضيرا لارتكاب عمل إرهابي. وتتوقف العقوبة القصوى على العقوبة القصوى المنطبقة على الجريمة الإرهابية التي لأجلها خُصص التمويل. وفي هذه الحالة، ليس من الضروري أن يكون العمل الإرهابي قد ارتُكب بالفعل. وثانيا، بوصفه تمويلا تم في سياق منظمة إجرامية. وفي هذه الحالة يمكن مقاضاة المشتبه فيه من أجل المشاركة في منظمة إجرامية (بموجب المادة ١٤٠ من المدونة الجنائية). والعقوبة القصوى على هذه الجريمة هي السجن لمدة ست سنوات. وعما قريب سيعرض على البرلمان مشروع قانون يتضمن حكما محددا (المادة ١٤٠ (أ)) بشأن المشاركة في المنظمات الإرهابية. والعقوبة القصوى المقترحة هي السجن لمدة ثماني سنوات. والطريقة الثالثة هي المعاقبة على تمويل الإرهاب بوصفه مشاركة في جريمة، مثل التآمر للحث على جريمة إرهابية (سواء نجحت أو لم تنجح)، وذلك بموجب المادتين ٤٦ (أ) و ٤٧ من المدونة الجنائية. ومرة أخرى تتوقف العقوبات القصوى على العقوبة القصوى المنطبقة على الجريمة الإرهابية التي لأجلها خُصص التمويل.

وبموجب المدونة الجنائية الهولندية يمكن تحميل الأشخاص الطبيعيين والاعتباريين على السواء المسؤولية الجنائية عن الجرائم المرتكبة، وبالتالي عن تمويل الإرهاب أيضا (المادة ٥١ من المدونة الجنائية).

وتمت مؤخرا الموافقة على مشاريع قوانين لتنفيذ الاتفاقية الدولية لقمع تمويل الإرهاب. وستدخل هذه التشريعات حيز النفاذ في ١ كانون الثاني/يناير ٢٠٠٢.

وتشريع الجزاءات الهولندي له صلة أيضا بالفقرة الفرعية ١ (د). فبموجب قانون الجزاءات لعام ١٩٧٧، يجوز للحكومة تنفيذ الجزاءات الدولية عن طريق مرسوم وطني. ويمكن المعاقبة على انتهاك قانون الجزاءات بموجب قانون الجرائم الاقتصادية.

والعقوبات على الانتهاك المتعمد لقانون الجزاءات هي الآن كالتالي: السجن لمدة أقصاها سنتان أو غرامة أقصاها ٠٠٠ ٢٥ غيلدر هولندي. وإذا انتفى عنصر التعمد تكون العقوبات السجن لمدة أقصاها ستة أشهر أو غرامة أقصاها ٠٠٠ ٢٥ غيلدر. وقد اقترح زيادة العقوبات القصوى بحيث تصبح: السجن لمدة أقصاها ست سنوات أو غرامة أقصاها ٠٠٠ ١٠٠ غيلدر بالنسبة للانتهاك المتعمد، والسجن لمدة أقصاها سنة واحدة أو غرامة أقصاها ٠٠٠ ٢٥ غيلدر بالنسبة للانتهاكات غير المتعمدة[٢].

وللاطلاع على مزيد من التفاصيل بشأن قانون الجزاءات والتعديلات المقترحة، انظر أيضا الفقرة الفرعية ١ (ج).

وللاطلاع على مزيد من التفاصيل بشأن التغييرات المقترح إدخالها على المدونة الجنائية، انظر أيضا الفقرتين الفرعيتين ٢ (د) و (هـ).

---

(٢) يمكن فرض عقوبات إضافية منها:

- إغلاق المؤسسة التجارية
- التجريد من الحقوق
- إشهار الحكم.

ويمكن أن تشمل التدابير الإضافية الأخرى ما يلي:

- وضع اليد على المؤسسة التجارية التي وقع فيها الجرم وذلك لمدة أقصاها ثلاث سنوات في حالة التعمد ولمدة أقصاها سنتان إذا كان الانتهاك عن غير قصد.
- فرض التزام بالقيام بما تم إغفاله بشكل غير قانوني، وإبطال ما ارتُكب بشكل غير قانوني، والقيام بما يجب لجبر الضرر، وجميعها على نفقة مرتكب الجرم، ما لم تقرر المحكمة خلاف ذلك.

١ (ج) ما هي التشريعات والإجراءات المتبعة لتجميد الحسابات والأصول المالية في المصارف والمؤسسات المالية؟ ويستحسن أن تقدم الدول أمثلة على أي إجراء ذي صلة تم اتخاذه.

التدابير المالية الناتجة عن قرارات مجلس الأمن تنفذ عموما من خلال أنظمة الاتحاد الأوروبي، التي تنطبق مباشرة في هولندا. وترد في تقرير الاتحاد الأوروبي المشار إليه أعلاه الإجراءات العامة المتبعة بالنسبة للقرارين ١٢٦٧ و ١٣٣٣.

وفي أعقاب ١١ أيلول/سبتمبر، أصدرت هولندا الأوامر الوزارية الثلاثة التالية استنادا إلى قانون الجزاءات لعام ١٩٧٧ في انتظار التنفيذ على الصعيد الأوروبي:

- في ٨ تشرين الأول/أكتوبر، أصدرت حكومة هولندا أمرا وزاريا يجمد فورا أصول ٢٧ من الأشخاص والمنظمات الواردة في الأمر الرئاسي الصادر عن الرئيس بوش[٣].
- وفي ١٢ تشرين الأول/أكتوبر، أصدرت حكومة هولندا أمرا آخر يجمد فورا أصول ٣٩ من الأشخاص والمنظمات الواردة في قائمة وزارة الخزانة الأمريكية الصادرة في ١٢ تشرين الأول/أكتوبر[٤].
- وصدر مؤخرا، في ٨ تشرين الثاني/نوفمبر، أمر وزاري يجمد أصول ٦٨ من الأشخاص والمنظمات الواردة في قائمة وزارة الخزانة الأمريكية الصادرة في ٧ تشرين الثاني/نوفمبر[٥].

وقد صدرت الأوامر الوزارية الثلاثة قبل أن تتخذ لجنة الأمم المتحدة المعنية بالجزاءات المفروضة على الطالبان قرارا بشأن تجميد الأصول المبينة في القوائم.

وعندما أضيفت أسماء الأشخاص المعنيين إلى القاعدة التنظيمية للاتحاد الأوروبي ٢٠٠١/٤٦٧ (المؤرخة ٦ آذار/مارس ٢٠٠١)، تم سحب الأوامر الثلاثة المذكورة، ذلك أن القواعد التنظيمية للاتحاد الأوروبي تنطبق مباشرة في هولندا. وبما أن الأوامر قد سُحبت،

---

(٣) انظر الأمر الثاني المتعلق بالجزاءات المفروضة على حركة الطالبان الأفغانية المؤرخ ٨ تشرين الأول/أكتوبر ٢٠٠١، والصادر في الجريدة الرسمية بتاريخ ١٠ تشرين الأول/أكتوبر ٢٠٠١.

(٤) انظر تعديل الأمر الثاني المتعلق بالجزاءات المفروضة على حركة الطالبان الأفغانية، المؤرخ ١٢ تشرين الأول/أكتوبر ٢٠٠١، والصادر في الجريدة الرسمية بتاريخ ١٥ تشرين الأول/أكتوبر ٢٠٠١.

(٥) انظر الأمر الثالث المتعلق بالجزاءات المفروضة على حركة الطالبان الأفغانية، المؤرخ ٨ تشرين الثاني/نوفمبر ٢٠٠١، والصادر في الجريدة الرسمية بتاريخ ٨ تشرين الثاني/نوفمبر ٢٠٠١.

أصبحت القواعد التنظيمية للاتحاد الأوروبي هي الأساس الذي يُستند إليه في تجميد أصول الإرهابيين في هولندا.

وأُبلغت إلى المؤسسات المالية الهولندية آخر قائمة بها ٢٢ منظمة إرهابية أصدرتها الولايات المتحدة في ٢ تشرين الثاني/نوفمبر. وطُلب إلى تلك المؤسسات أن تتحقق من سجلاتها للكشف عن أي تشابه ممكن.

وبعد أن أصدر الرئيس بوش الأمر الرئاسي الأول في ٢٧ أيلول/سبتمبر، ضم مصرف هولندا الوطني قائمته الخاصة إلى القائمة السرية التي أصدرها مكتب التحقيقات الاتحادي (التي أُرسلت إلى المصرف بناء على طلبه). وأُضيفت إلى القائمة أيضا الأسماء التي عُرفت عن طريق أنشطة الاستخبارات الوطنية أو نتيجة لتبادل المعلومات مع وكالات الاستخبارات الأجنبية. وأطلع مصرف هولندا الوطني المصارف الخاصة التي يشرف عليها على القائمة الموحدة - التي تضم ما يزيد على ٥٠٠ اسم - وذلك عن طريق خطاب تعميم يطلب إلى تلك المصارف مطابقة أسماء أصحاب الحسابات لديها مع أسماء الأشخاص والمنظمات الواردة في تلك القائمة. واتبع المصرف الوطني لهولندا نفس الإجراء بالنسبة للقوائم الأخرى التي صدرت خلال تشرين الأول/أكتوبر وتشرين الثاني/نوفمبر. واتخذ المجلس الوطني للمعاشات والتأمين والمجلس الوطني للأوراق المالية إجراءات مماثلة.

وحتى الآن، تم رسميا تجميد حساب مصرفي واحد استنادا إلى قائمة الأمم المتحدة. وهذا الحساب يملكه مصرف دولة أفغانستان ورصيده ٢٨٥,٩٦ ٤٩٥ من دولارات الولايات المتحدة. وحدد المشرفون الماليون عددا من الأصول الأخرى المحتملة هي الآن قيد التحقيق. ويجري الحفاظ على سرية المعلومات غير المتاحة للعموم والمتعلقة بأصول يمكن أن تكون ملكا لكيانات توجد أسماؤها في القوائم.

وتوصل مجلس الاتحاد الأوروبي إلى اتفاق بشأن موقف مشترك وقاعدة تنظيمية (وردت تفاصيله في تقرير الاتحاد الأوروبي) بغية تمكين الاتحاد من تكييف إجراءاته مع مجموعة التدابير الأوسع نطاقا التي يشملها قرار مجلس الأمن ١٣٧٣ ومن الوصول إلى الأشخاص الذين يرتكبون أعمالا إرهابية أو يحاولون ارتكابها أو المشاركة فيها أو تيسيرها، ولكنهم غير مرتبطين بأي دولة.

وعلى الصعيد الوطني، تعمل هولندا على إعداد تعديلات مماثلة سيجري إدخالها على قانون ١٩٧٧ المذكور أعلاه المتصل بالجزاءات، إضافة إلى التعديلات المشار إليها في الفقرة الفرعية ١ (ب). وفي هذا السياق، تُعِد هولندا حاليا تعديلا لقانون الجزاءات يُلغي منه الحكم التقييدي الذي يشير إلى ''دول أو أقاليم بعينها''. وسيمكّن التشريع الجديد السلطات من

تنفيذ الجزاءات الدولية (المالية أو غيرها) ضد من يرتكبون أعمالا إرهابية أو يحاولون ارتكابها أو ييسرونها، سواء كانوا أشخاصا أو كيانات. وسيجري أيضا تعزيز مراقبة الامتثال لهذا القانون. وهذا الأمر سيكفل مزيدا من الجدوى لمحاولات المؤسسات المالية الرامية إلى تجميد حسابات الإرهابيين والحيلولة دون تزويدهم بالأموال. ومن المحتمل أن ينظر البرلمان في التعديلات المتصلة بقانون الجزاءات خلال النصف الأول من عام ٢٠٠٢.

وفي أروبا، يجوز قانونيا تجميد الحسابات المصرفية للأشخاص الخاضعين لتحقيق جنائي، أي المشتبه في ارتكابهم أعمالا إرهابية على النحو المنصوص عليه في المدونة الجنائية. ويجوز أيضا تجميد الحسابات في حالة طلب تبادل المساعدة القانونية في المسائل الجنائية، أي عندما يتعلق الأمر بتحقيق جنائي في بلد أجنبي، وفي تلك الحالة تُصادر الأموال في أروبا. وفضلا عن ذلك، يجوز حجز الحسابات المصرفية ومصادرة الأموال أو الأصول التي يملكها أشخاص صدر بشأنهم أمر حجز في بلد أجنبي.

وفي جزر الأنتيل الهولندية، تتضمن المادتان ٤ و ٤ (ب) من قانون مبادلة العملات الأجنبية أحكاما بشأن تجميد الحسابات والأصول في المصارف والمؤسسات المالية التي يشرف عليها المصرف المركزي بقطع النظر عما إذا كان لديها حسابات أو أصول للأشخاص المشار إليهم في الأمر الوزاري.

١ (د) ما هي التدابير المتبعة لحظر الأنشطة المدرجة في هذه الفقرة الفرعية؟

انظر الفقرات ١ (أ) و (ب) و (ج).

٢ (أ) ما هي التشريعات أو التدابير الأخرى المتبعة لتنفيذ هذه الفقرة الفرعية؟ وما هي خاصة الجرائم التي تحظر في بلدكم؟ '١' تجنيد أعضاء الجماعات الإرهابية و '٢' تزويد الإرهابيين بالسلاح؟ وما هي التدابير الأخرى التي تساعد في منع هذه الأنشطة؟

بموجب القانون الجنائي في هولندا، يعتبر تجنيد أعضاء الجماعات الإرهابية تحريضا على ارتكاب جريمة أو عمل من أعمال العنف ضد السلطات العامة (المادتان ١٣١ و ١٣٢ من المدونة الجنائية). ويجوز أيضا المعاقبة عليه بوصفه تحريضا أو محاولة تحريض على ارتكاب جريمة (بموجب المادتين ٤٦ (أ) و ٤٧ من المدونة الجنائية).

وبموجب قانون الأسلحة والذخيرة، تعتبر تجارة الأسلحة بدون ترخيص جريمة. وطلب الحصول على ترخيص يرفض دائما إذا كان مقدمه لا يُستأمن على حيازة سلاح، أو إذا كان يُخشى إساءة استعمال ذلك السلاح، أو لوجود أي سبب ملح آخر يدعو إلى رفض الطلب خدمة للمصلحة العامة.

وحيثما دعت الحاجة، سيجري تعديل أنظمة تصدير الأسلحة المنطبقة في كافة أنحاء المملكة أو توسيع نطاقها ليتسنى الرصد الفعال لاستيراد وعبور وتصدير البضائع الاستراتيجية، بما في ذلك الجوانب المالية المتصلة بتلك التحركات. وإضافة إلى ذلك، سيجري عما قريب (اعتبارا من ١ كانون الثاني/يناير ٢٠٠٢) تشديد القواعد المتعلقة بعبور البضائع الاستراتيجية. وهذا الترتيب سيسهل الحيلولة دون عبور الأسلحة إلى وجهات غير مرغوب فيها.

أما التدابير الأوروبية لمراقبة حيازة الأسلحة، فقد أشير إليها في تقرير الاتحاد الأوروبي.

٢ (ب) ما هي الخطوات الأخرى المتخذة لمنع ارتكاب الأعمال الإرهابية، وما هي بخاصة آليات الإنذار المبكر المتوافرة التي تتيح تبادل المعلومات مع الدول الأخرى؟

للاطلاع على التعاون في إطار الاتحاد الأوروبي، انظر تقرير الاتحاد الأوروبي.

على الصعيد الوطني: تحقق دائرة الأمن الوطني، كجزء من واجباتها الرسمية، في من قد يكون لهم ضلع في التحضير للأنشطة الإرهابية أو دعمها، أشخاصا كانوا أم منظمات. وفي هذا الصدد، تعمل الدائرة بشكل استباقي. وفيما يتعلق بمنع الأنشطة الإرهابية، يتضمن قانون دوائر الاستخبارات والأمن حكما ينص على إلزام من تتوافر لديهم بيانات شخصية بإتاحتها لدائرة الأمن الوطني.

وفي هولندا، تتولى النيابة العامة مسؤولية التحقيق في الجرائم والمقاضاة عليها، وفي هذا السياق تمارس سلطتها على دائرة الشرطة. وينسق المدعي العام الوطني المعني بمكافحة الإرهاب حملة مكافحة الإرهاب (أو بالأحرى التصدي لمخاطر إرهابية محددة) وهو يتعاون بشكل وثيق مع دائرة الأمن الوطني.

وتتبادل وزارة العدل (التي تضم دائرة الهجرة والتجنس) والنيابة العامة ودائرة الأمن الوطني المعلومات بشأن الأشخاص الذين ثبت تورطهم في أنشطة إرهابية أو دعمهم لها. وفي هذا المجال، تتعاون دائرة الأمن الوطني وتتبادل المعلومات باستمرار مع الشرطة العسكرية المَلَكية.

على الصعيد الدولي: تعمل دائرة الأمن الوطني بشكل وثيق مع دوائر الاستخبارات والأمن الأجنبية. ويشمل ذلك التبادل المستمر للمعلومات، الذي هو بمثابة نظام للإنذار المبكر. ويتوافر لدى الدوائر أيضا ضباط اتصال خاصون لهذه المهام. فعلى سبيل المثال، قامت الدائرة تحديدا بتعيين ضباط اتصال معنيين بمكافحة الإرهاب لغرض المساعدة في

التعاون داخل الاتحاد الأوروبي ومنظمة حلف شمال الأطلسي. ولها أيضا اتصالات بشأن المسائل التنفيذية الخاصة. وحيثما دعت الحاجة، يجري إنشاء شبكات دولية لمعالجة مسائل معينة. والطرف التابع لدائرة الأمن الوطني والمشارك في هذه الشبكة يقوم أيضا بالإجابة عن الأسئلة الواردة من البلدان الأخرى. كما توجد شبكة لمكاتب الاتصال تضم دوائر الاستخبارات والأمن التابعة لبلدان الاتحاد الأوروبي، وهي تمكّن البلدان من تبادل المعلومات بطريقة مأمونة عن أي حادثة إرهابية وقعت أو حيل دون وقوعها. وختاما، ارتبطت دائرة الأمن الوطني مؤخرا بالآلية الدولية لتبادل المعلومات وذلك عن طريق المكتب الأوروبي للإنتربول، الذي أعارته موظفا لهذا الغرض.

٢ (ج) ما هي التشريعات أو الإجراءات المتبعة لعدم توفير الملاذ الآمن للإرهابيين، كقوانين إبعاد أو طرد الأشخاص المشار إليهم في هذه الفقرة الفرعية؟ ويستحسن أن تقدم الدول أمثلة على أي إجراء ذي صلة تم اتخاذه.

تنص المدونة الجنائية الهولندية على انطباق مبدأ الولاية القضائية الثانوية الشاملة، وهذا يعني أنه في الحالات التي لا تسلّم فيها هولندا شخصا يشتبه في ارتكابه لجريمة إرهابية، تكون ملزمة بمقاضاة الشخص المعني في هولندا. وهذا يمنع الإرهابيين من الحصول على ملاذ آمن في هولندا.

ويمكن الاطلاع على معلومات إضافية في هذا الشأن في الفقرات الفرعية ٣ (ج) و (و) و (ز).

وتوصل الاتحاد الأوروبي إلى اتفاق سياسي على قرار إطاري بشأن أمر القبض الأوروبي وإجراءات لتبسيط تسليم المجرمين فيما بين الدول الأعضاء في الاتحاد. وإضافة إلى ذلك، ستبذل هولندا قصاراها للتصديق، قبل نهاية عام ٢٠٠٢، على اتفاق الاتحاد الأوروبي لتبادل المساعدة القانونية.

وللاطلاع على مزيد من التدابير الأوروبية، انظر تقرير الاتحاد الأوروبي.

٢ (د) ما هي التشريعات أو الإجراءات القائمة لمنع الإرهابيين من العمل ضد دول أخرى أو مواطنين آخرين انطلاقا من إقليمكم؟ وسيكون من المفيد لو قُدمت الدول أمثلة على أي إجراءات اتُخذت في هذا الصدد.

المادة ١٤٠ من المدونة الجنائية التي تعتبر أن المشاركة في منظمة إجرامية تشكل جريمة، لا يقتصر انطباقها على المنظمات التي تهدف إلى ارتكاب جرائم في هولندا؛ وهذا

يعني أن الشخص الموجود في هولندا والذي يشارك في منظمة تهدف إلى ارتكاب جرائم في الخارج يرتكب جريمة حسب القانون الهولندي.

وبغية تنفيذ القرار الإطاري للاتحاد الأوروبي المتعلق بمكافحة الإرهاب، من المقترح حاليا إدخال تعديل يتمثل في إضافة مادة هي المادة ١٤٠ (أ) إلى المدونة الجنائية، تنص على أن المشاركة في منظمة إرهابية تشكل جريمة مستقلة بذاتها. وستكون العقوبات على المشاركة في منظمة إرهابية (المادة ١٤٠ (أ)) أشد من العقوبات المتصلة بالمشاركة في منظمة إجرامية (المادة ١٤٠).

انظر أيضا الفقرات الفرعية ٢ (ج) و ٢ (هـ) و ٢ (ز) ورد الاتحاد الأوروبي.

٢ (هـ) ما هي الخطوات التي اتُخذت لاعتبار الأعمال الإرهابية أعمالا إجرامية خطيرة ولكفالة أن يعكس العقاب خطورة هذه الأعمال الإرهابية؟ الرجاء تقديم أمثلة على أي إدانات والحكم الصادر فيها.

صَدَّقت هولندا على عشر من اتفاقيات الأمم المتحدة الإثنتي عشرة المتعلقة بمكافحة الإرهاب. وسيجري في كانون الثاني/يناير ٢٠٠٢ التصديق على الاتفاقيتين المتبقيتين (بشأن الهجمات الإرهابية بالقنابل وتمويل الإرهاب). ونتيجة لذلك، فإن كافة الجرائم المنصوص عليها في اتفاقيات الأمم المتحدة الإثنتي عشرة المتعلقة بمكافحة الإرهاب تعتبر جرائم في هولندا.

واتفق الاتحاد الأوروبي على قرار إطاري بشأن مكافحة الإرهاب. ويتضمن الاتفاق تعريفا مشتركا لمختلف أصناف الجرائم الإرهابية والجزاءات الجنائية الشديدة. ويجب أن يعاقَب على المشاركة في منظمة إرهابية بالسجن لمدة ثماني سنوات على الأقل، وعلى قيادة منظمة من ذلك القبيل بالسجن لمدة ١٥ سنة. وللاطلاع على التدابير الأوروبية الأخرى، انظر إجابة الاتحاد الأوروبي.

وستقدم هولندا، في مستهل عام ٢٠٠٢، مشروع قانون لتنفيذ القرار الإطاري المذكور أعلاه. وسيتضمن هذا المشروع عدة تعديلات للمدونة الجنائية وتشريعات أخرى في هذا الشأن. كما سيتضمن إضافة مادة جديدة مستقلة هي المادة ١٤٠ (أ) بشأن المشاركة في المنظمات الإرهابية وينص على عقوبات أشد مما يُسلّط في حالة المشاركة في المنظمات الإجرامية (انظر أيضا الفقرة الفرعية ٢ (د)).

وسيجري أيضا اعتماد عقوبات أشد بالنسبة لعدة جرائم خطيرة أخرى، إذا ثبت أن الجريمة ارتُكبت بهدف إرهابي.

٢ (و) ما هي الإجراءات والآليات القائمة لمساعدة الدول الأخرى؟ الرجاء تقديم أي تفاصيل متاحة عن كيفية استخدامها عمليا.

توجد بالفعل إجراءات واسعة النطاق لتبادل المعلومات بين دوائر الاستخبارات ودوائر الأمن، على النحو الوارد في الفقرة الفرعية ٢ (ب). وكانت المساعدة في التحقيقات التي تجريها دوائر البلدان الأخرى بشأن الأعمال الإرهابية تحظى بأولوية عالية حتى قبل ١١ أيلول/سبتمبر. ونتيجة لأحداث ١١ أيلول/سبتمبر، تعزز التعاون وتبادل المعلومات، بما في ذلك ما يتصل بالتحقيقات المالية.

وهناك شكل آخر من أشكال تبادل المساعدة هو التعاون المتزايد باستمرار بين الدول الأعضاء في فرقة العمل للإجراءات المالية المعنية بغسل الأموال، وذلك بالنسبة لغسل الأموال وتمويل الإرهاب.

ويمكن لاتفاقيات الأمم المتحدة الإثنتي عشرة المتعلقة بمكافحة الإرهاب أن تتيح أيضا أساسا لتسليم المجرمين والمساعدة القانونية، إضافة إلى المعاهدات الثنائية والمتعددة الأطراف القائمة بشأن تسليم المجرمين وتبادل المساعدة القانونية (انظر أيضا الفقرة الفرعية ٣ (ج)).

٢ (ز) كيف تمنع عمليات المراقبة على الحدود في بلدكم حركة الإرهابيين؟ وكيف تدعم إجراءات إصدار أوراق الهوية ووثائق السفر هذا الأمر؟ وما هي التدابير الموجودة لمنع تزييفها وما إلى ذلك؟

يناقش الاتحاد الأوروبي حاليا تعزيز التعاون بشأن عمليات مراقبة الحدود الخارجية. وقد قرر المجلس الأوروبي في لاكن تكثيف التعاون في هذا الميدان. وطلب الاتحاد إلى المجلس واللجنة تقديم مقترحات بشأن آلية أو دائرة مشتركة معنية بمراقبة الحدود الخارجية.

ويجري على الصعيد الأوروبي وضع شكل موحد لتصاريح إقامة سيتم إصدارها لغير مواطني الاتحاد الأوروبي. كما يولي الاتحاد قدرا كبيرا من الاهتمام للتعاون القنصلي على الصعيد المحلي، بما في ذلك ما يتصل بإصدار تأشيرات السفر ومكافحة الغش.

وعلى الصعيد الوطني، اتخذت هولندا التدابير التالية:

- استحداث تقنيات لاستخدام القياسات الأحيائية - بهدف تحديد الهوية. إذ لتعقب الأجانب المقيمين في هولندا، من المهم تسجيل معلومات محددة بشأنهم قبل أن يدخلوا البلد. ومن الأدوات الناجعة لتحديد هوية الأشخاص المعلومات المتعلقة بالسمات الجسدية إلى جانب سجلات التفاصيل الشخصية التي تقدم مع طلبات التأشيرات وطلبات اللجوء عند دخول البلد وعند مغادرته. وفي مرحلة لاحقة،

يمكن بسهولة أكبر تحديد الأشخاص المعنيين واسترجاع التفاصيل الخاصة بهم من نظم المعلومات، حتى وإن كانوا قد غيروا هويتهم.

- وحث الاتحاد الأوروبي دوله الأعضاء على تعزيز عمليات مراقبتها للحدود الخارجية. وبالنسبة لهولندا، يعني هذا إعطاء الأولوية لنقاط الدخول: مطار شيفول والميناءين (روتردام وامستردام).

- ويجري حاليا العمل على زيادة توافر المعلومات بشأن الاتجار بالأشخاص وإمكانية تسلل الإرهابيين والأنشطة الإرهابية. ويجري أيضا تعزيز القدرة على تحليل المعلومات.

- وعلى الصعيد الوطني، تتعاون دائرة الأمن الوطني وتتبادل المعلومات باستمرار مع الشرطة العسكرية المَلَكية بشأن مراقبة الأشخاص الذين قد يكون لهم ضلع في أنشطة إرهابية أو يدعمون تلك الأنشطة، ومنعهم من دخول البلد أو مغادرته. ويتم جزء من هذا التعاون في إطار مهام الوحدة المتنقلة لمراقبة الهجرة التابعة للشرطة العسكرية الملكية.

٣ (أ) ما هي الخطوات التي اتخذت لتكثيف تبادل المعلومات العملية والتعجيل بها في المجالات المشار إليها في هذه الفقرة الفرعية؟

تناولت الفقرة الفرعية ٢ (ب) التعاون الوطني والدولي القائم في مكافحة الإرهاب، وتكثيفه منذ ١١ أيلول/سبتمبر.

وعلى الصعيد الأوروبي، تم مؤخرا تعزيز التعاون التنفيذي عن طريق إقامة مشاورات بين رؤساء أقسام مكافحة الإرهاب التابعة لدوائر الأمن الأوروبية. وستفضي هذه المحادثات إلى تدابير ملموسة لتحسين التعاون التنفيذي. وختاما، ما برحت دائرة الأمن الوطني تتعاون وتتبادل المعلومات على نحو وثيق مع المنظمات الوطنية والدولية ودوائر الاستخبارات والأمن بشأن عدم انتشار أسلحة الدمار الشامل.

وفيما يتعلق بالخطر الإرهابي، استهل الاتحاد الأوروبي خطة عمل لاستعراض تدعيم الصكوك المتعددة الأطراف في مجال نزع السلاح وتحديد الأسلحة وعدم الانتشار. وسيجري تعزيز مراقبة الصادرات لمنع الجماعات الإرهابية من اقتناء المواد المتصلة بأسلحة الدمار الشامل.

وستدرج مكافحة الإرهاب كأحد أهداف اتفاق واسنار. كما سيعطى الإرهاب مزيدا من الأولوية في عمليات تبادل المعلومات.

٣ (ب) ما هي الخطوات التي اتخذت لتبادل المعلومات والتعاون في المجالات المشار إليها في هذه الفقرة الفرعية؟

انظر الفقرة الفرعية ٢ (ب).

٣ (ج) ما هي الخطوات التي اتخذت للتعاون في المجالات المشار إليها في هذه الفقرة الفرعية؟

للاطلاع على التدابير المتخذة في السياق الأوروبي، انظر رد الاتحاد الأوروبي.

ومملكة هولندا طرف أيضا في عدد من المعاهدات الثنائية والمتعددة الأطراف المتصلة بالمجالات المبينة في هذه الفقرة الفرعية. ويمكن تصنيف أهم المعاهدات في هذا الصدد كالتالي:

- الاتفاقيات المتصلة تحديدا بمنع الإرهاب الدولي وقمعه (انظر أيضا الفقرة الفرعية ٣ (د)). وإضافة إلى ذلك، صدقت هولندا على الاتفاقية الأوروبية لعام ١٩٧٧ بشأن قمع الإرهاب (بالنسبة للجزء الأوروبي من المملكة فقط)

- معاهدات تسليم المجرمين

أبرمت هولندا معاهدات ثنائية مع ٢٠ دولة أخرى (منها ما يهم الجزء الأوروبي من المملكة فقط، ومنها ما يهم كذلك جزر الأنتيل الهولندية وأروبا). وإضافة إلى ذلك، فإن هولندا طرف في الاتفاقية الأوروبية لعام ١٩٥٧ بشأن تسليم المجرمين، ومعاهدة عام ١٩٦٢ بين هولندا وبلجيكا ولكسمبرغ بشأن تسليم المجرمين وتبادل المساعدة في المسائل الجنائية، واتفاقية الاتحاد الأوروبي لعام ١٩٩٦ المتصلة بتسليم المجرمين بين الدول الأعضاء في الاتحاد الأوروبي (لم تدخل حيز النفاذ بعد).

- المعاهدات المتعلقة بتبادل المساعدة في المسائل الجنائية

أبرمت هولندا معاهدات ثنائية مع سبع دول أخرى (منها ما يهم الجزء الأوروبي من المملكة فقط ومنها ما يهم كذلك جزر الأنتيل الهولندية وأروبا). وإضافة إلى ذلك فإن هولندا طرف في الاتفاقية الأوروبية لعام ١٩٥٩ بشأن تبادل المساعدة في المسائل الجنائية وبروتوكول عام ١٩٧٨ الإضافي التابع لهذه الاتفاقية (لكل من الجزء الأوروبي من المملكة وجزر الأنتيل الهولندية وأروبا). وأبرم بروتوكول إضافي ثان لهذه الاتفاقية في تشرين الثاني/نوفمبر ٢٠٠١ ولكنه لم يدخل حيز النفاذ بعد. وهولندا طرف أيضا في اتفاقية اتحاد بينيلوكس لعام ١٩٦٢ بشأن تسليم المجرمين وتبادل المساعدة في المسائل الجنائية وبروتوكول عام ١٩٧٤ الإضافي التابع لهذه الاتفاقية (بالنسبة للجزء الأوروبي من المملكة فقط). وختاما

أبرمت اتفاقيتان للاتحاد الاوروبي ولكنهما لم تدخلا حيز النفاذ بعد: اتفاقية عام ٢٠٠٠ بشأن تبادل المساعدة في المسائل الجنائية وبروتوكول هذه الاتفاقية المبرم في تشرين الأول/ أكتوبر ٢٠٠١.

٣ (د) ما هي الأمور التي تعتزم حكومتكم القيام بها فيما يتعلق بالتوقيع و/أو بالتصديق على الاتفاقيات والبروتوكولات المشار إليها في هذه الفقرة الفرعية؟

وقّعت مملكة هولندا على جميع الاتفاقيات الدولية الاثنتي عشرة المتصلة بمنع وقمع الارهاب الدولي وصدقت عليها. وقد اكتمل تقريبا الإجراء المتعلق بالموافقة البرلمانية على الاتفاقيتين المتبقيتين (قمع الهجمات الارهابية بالقنابل وقمع تمويل الارهاب، ١٩٩٩). ومن المتوقع أن تصدق هولندا على هاتين الاتفاقيتين في كانون الثاني/يناير ٢٠٠٢.

وقد نفذت جزر الانتيل الهولندية وأروبا بالكامل ثلاث اتفاقيات دولية (١ - الاتفاقية الخاصة بالجرائم المرتكبة على متن الطائرات، ٢ - اتفاقية مكافحة الاستيلاء غير المشروع على الطائرات، ٣ - اتفاقية قمع الأعمال غير المشروعة الموجهة ضد سلامة الطيران المدني). ويجري حاليا إعداد التشريعات المتصلة بتنفيذ الاتفاقيات المتبقية في جزر الانتيل الهولندية وأروبا، بمساعدة هولندا، عند الاقتضاء.

وسيتم في عام ٢٠٠٢ وضع الصيغة النهائية لتشريعات التنفيذ اللازمة للاتفاقيات الدولية الاثنتي عشرة جميعها بالنسبة لأجزاء المملكة الثلاثة.

٣ (هـ) قدم أي معلومات ذات صلة بتنفيذ الاتفاقيات والبروتوكولات والقرارات المشار إليها في هذه الفقرة الفرعية

انظر الفقرة الفرعية ٣ (د).

٣ (و) و ٣ (ز) ما هي التشريعات والإجراءات والآليات القائمة لكفالة أن طالبي اللجوء لم يشاركوا في أنشطة إرهابية قبل منحهم مركز اللاجئ؟ برجاء تقديم أمثلة عن أي حالات ذات صلة. وما هي الإجراءات القائمة لمنع إساءة استغلال وضع اللاجئين من قبل الارهابيين؟ برجاء تقديم تفاصيل عن التشريعات و/أو الإجراءات الادارية التي تمنع الادعاءات بوجود بواعث سياسية من أن تقبل كأسباب لرفض طلبات تسليم الارهابيين المشتبه بهم. برجاء تقديم أمثلة عن أي حالة ذات صلة.

للاطلاع على التدابير المتخذة في سياق الاتحاد الاوروبي، انظر رد الاتحاد الأوروبي.

المادة ١ واو من الاتفاقية المتعلقة بمركز اللاجئين تخول لهولندا رفض طلبات اللجوء المقدمة من أشخاص هناك أسباب قوية للاشتباه بأنهم ارتكبوا جريمة ضد السلام أو جريمة

حرب أو جريمة ضد الإنسانية (الفقرة الفرعية (أ)) أو جريمة غير سياسية خطيرة خارج بلد اللجوء (الفقرة الفرعية (ب)). وقد حدث ذلك في مناسبات عديدة.

وتقوم دائرة الهجرة والتجنس بإخضاع جميع طلبات اللجوء إلى الفحص وفقا للمادة ١ واو. وأعلنت وزارة العدل اعتزامها إنشاء وحدة ثانية في إطار المادة ١ واو لكفالة التجهيز الدقيق والسريع للحالات بموجب تلك المادة. ويُنتظر أن تكون هذه الوحدة جاهزة للعمل بحلول منتصف عام ٢٠٠٣. وطالبو اللجوء الذين استنفدوا جميع السبل القانونية ورُفضت طلباتهم بموجب المادة ١ واو يجوز من حيث المبدأ ترحيلهم إلى بلدهم الاصلي. بيد أن هذا الامر قد تمنعه بعض أحكام الاتفاقية الاوروبية لحماية حقوق الإنسان والحريات الأساسية (المادة ٣، على سبيل المثال) أو أحكام من اتفاقيات أخرى (مثل اتفاقية مناهضة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة). وطالبو اللجوء الذين استنفدوا جميع الوسائل والذين لا يمتثلون لأمر بمغادرة البلد لا يكون لهم الحق في الخدمات والتسهيلات، وبالتالي يُحرمون منها؛ وهذا يثنيهم عن البقاء في هولندا. وعند الاقتضاء، يمكن الإعلان عن انهم أجانب غير مرغوب فيهم. ويرجح أن دائرة الهجرة والتجنس ستكثف استعمالها لهذا الخيار في المستقبل.

وبموجب القانون الهولندي للأجانب، يجوز سحب مركز اللاجئ بعد منحه إذا تم، مثلا، التعرف على شخص له مركز اللاجئ من جانب ضحيته، وأُبلغ ذلك إلى دائرة الهجرة والتجنس، وإذا خلصت الدائرة إلى أن هناك سببا قويا للاشتباه في أن اللاجئ المعني ارتكب جريمة على النحو الوارد في المادة ١ واو يمكن سحب مركز اللاجئ (بقطع النظر عما إذا كان لذلك الشخص تصريح دائم أو مؤقت بالاقامة؛ انظر المادتين ٣٢ - ٣ (ن) و ٣٥ من قانون الأجانب لعام ٢٠٠٠). وقد حدث ذلك في الواقع.

وتتعاون دائرة الأمن الوطني ودائرة الهجرة والتجنس بشكل وثيق في تبادل المعلومات بشأن الأشخاص المشتبه في أنهم يستغلون نظام اللجوء والهجرة الهولندي أو أنهم غير مؤهلين للحصول على مركز اللاجئ (المعروف باسم مركز المادة ١ واو). ومنذ ١١ أيلول/سبتمبر أصبحت تُعطى أولوية خاصة لتبادل المعلومات بشأن الأشخاص المشتبه في ارتكابهم أو إعدادهم لأنشطة إرهابية. وفي مثل هذه الحالات يقدم رئيس دائرة الأمن الوطني استنتاجاته إلى وزير العدل. وفي السنوات القليلة الماضية تم تعزيز التحقيق في الهجرة غير المشروعة وطرائق عمل المنظمات التي لها ضلع في ذلك (بما فيها المنظمات الارهابية) وشبكات دعم هذا النوع من النشاط في هولندا.

وفيما يتعلق بعمليات مراقبة الحدود وإصدار التأشيرات، اتُخذت على الصعيد الأوروبي التدابير العامة المشار إليها في الفقرة الفرعية ٢ (ز).

٣-٣ يمكن للدول أن تدرج في تقاريرها معلومات إضافية ذات صلة، بما فيها معلومات عن المسائل الواردة في الفقرة ٤ من القرار ١٣٧٣ (٢٠٠١). كما يمكنها إدراج ملاحظات عامة بشأن تطبيق القرار، وبيان أي مشاكل تتم مواجهتها بإيجاز.

مرفق بهذا التقرير الوثيقتان التاليتان:

- خطة العمل التي تتضمن ٤٥ تدبيرا جديدا لمكافحة الإرهاب؛
- المذكرة المتضمنة تفاصيل التدابير الرامية إلى زيادة تعزيز سلامة القطاع المالي ومنع الأنشطة الإرهابية.

Unofficial Translation

POLICY DOCUMENT ON THE INTEGRITY OF THE FINANCIAL SECTOR AND THE FIGHT AGAINST TERRORISM

MINISTRY OF FINANCE OF THE NETHERLANDS

MINISTRY OF JUSTICE OF THE NETHERLANDS

15 NOVEMBER 2001

For information, please contact:
Ministry of Finance
Central Information Directorate
Korte Voorhout 7
PO Box 20201
2500 EE Den Haag
Tel: +31 70 - 3427540
Fax: +31 70 - 3427900
E-mail: cdvbpv@minfin.nl

1. Introduction

In a letter dated 5 October 2001 from the Dutch cabinet[1] the action plan on combating terrorism and promoting safety was presented to the Lower House. Chapter 5 of the action plan relates to the integrity of the financial sector and the fight against terrorism. This chapter identifies thirteen action points that contribute to tracing relations between money flows and terrorist activities. The last action point of this chapter (33) contains the pledge that a paper on 'Integrity of the Financial Sector and the Fight Against Terrorism' will be published. This is the document produced by the Dutch Ministers of Finance and Justice.

It is imperative to give sufficient attention to the integrity of the financial sector given the money flows involved. The Netherlands has around 3400 financial institutions and the money flows relating to international financial transactions are enormous. In the second quarter of 2001 alone, incoming capital traffic, relating to securities transactions, derivatives and other financial transactions[2], totalled 76 billion Euro while outgoings amounted to 69 billion Euro[3].

The theme of fighting terrorism should be placed in a broader context. After all, like other types of crime, terrorism begins with prevention, supervision, and administrative action and ends with criminal investigation, prosecution and the implementation of sanctions imposed. This means that fighting terrorism effectively is only possible if sound legislation is in place and if the organisations responsible are adequately equipped both in a qualitative and quantitative sense, to tackle crime in a broader context. Fighting terrorism is thus part of the broader theme of crime control and should be approached from this perspective. The broader nomenclature and the content of this document express this. With regard to a number of aspects, this paper thus builds on the 1997 policy paper on the Integrity of the Financial Sector[4].

Stepping up the fight against money laundering works towards combating finances poured into terrorism. Because the fight against money laundering and against terrorist financing is not a perfect match, specific action to combat terrorism is required in addition to fighting money laundering.

Tracing the relation between finance flows and terrorist activities is of prime importance in tackling terrorism. Cutting off terrorism's financial resources and (partly) tracing terrorist activities via financial channels demands an integrated approach that, given the above-mentioned volumes of money flows should be founded on a number of national and international pillars.

The goal of this paper is therefore not only to discuss actions 20 – 32 from the above-mentioned chapter in the action plan, but also to place them in a coherent and intensive approach. The key starting Points are the following.

A first departure point for an effective approach is the systematic opening up of the financial flows in an economy. This requires sound financial supervisory legislation to enable financial institutions to operate competitively while simultaneously offering sufficient depth and breadth to cover the financial sector as a whole.

---

[1] Parliamentary documents II, 2001-2002, 27 925, no.10.

[2] The financial flows via company service providers are only partly known (see also par. 2.3); the registered flows for 2000 amounted to some 49 billion Euro incoming and around 39 billion Euro outgoing.

[3] Statistical bulletin De Nederlandsche Bank, September 2001

[4] Parliamentary documents II,1997-1998, 25 830, nos 1-2

This starting point is not only aimed at fighting terrorism but also at financial supervision, namely to protect consumer interests, the operation of financial markets and the integrity of the financial sector. Terrorism can also be related to other forms of crime, which can be tackled using information from the financial sector.

A second starting point is the existence of sound legislation to enable using information provided by the financial flows in investigating and prosecuting terrorists. This starting point should be interpreted broadly; after all, unusual and suspicious money flows may not always be related to terrorism.

Thirdly, the above-mentioned legislation must be effectively maintained and implemented. Each of the organisations involved in enforcement should have the requisite expertise and authorities to decisively carry out the allocated tasks in the field of supervision, investigation and prosecuting arising from the afore-mentioned legislation. Here, good co-operation and co-ordination are essential.

These three starting points are also the main structure of the paper.

Chapter 2 centres on legislation relating to financial supervision, specifically a number of current adjustments that have been made to accommodate the fight against terrorism.

Chapter 3 focuses on legislation on unusual and suspicious money transactions, both from the perspective of financial sanctions and from investigating and prosecuting suspicious transactions.

Chapter 4 treats enforcing the legislation outlined in chapters 2 and 3. With a view to fighting terrorism, this chapter emphasises the criminal law enforcement chain.

By way of conclusion, chapters 5 and 6 treat the budgetary consequences and present a number of final considerations. In the light of recent incidents and the dynamic that ensued, this policy paper partly reflects the current state of play; we have attempted nonetheless to place government policy in a long-term perspective.

These chapters of the document systematically place the afore-mentioned action points (20 – 32) in a framework, plus the various related policy and legislative processes.

In addition, the Minister of Finance conducted ten bilateral talks with the organisations that are most involved: the Securities Board of the Netherlands (Stichting Toezicht Effectenverkeer or STE), the Central Bank of the Netherlands(De Nederlandsche Bank or DNB), the Pension and Insurance Chamber (Pensioen- en Verzekeringskamer or PVK), the police, the Dutch Public Prosecutions Department, the Dutch National Security Service (Binnenlandse Veiligheidsdienst or BVD), the Fiscal Intelligence and Investigation Service-Economic Monitoring Service (FIOD-ECD), the Judicial Council (Raad voor de Rechtspraak) (which is currently being set up), the Netherlands Bankers' Association (Nederlandse Vereniging van Banken) and the Netherlands Association of Insurers (Verbond van Verzekeraars).

As well as supporting the intentions outlined in the action plan, these talks also generated new ideas and lines of thinking. In specific, these concern improving the efficacy of anti-money laundering legislation, improving the contexts for reciprocal information exchange and reinforcing the criminal law enforcement chain. This three-layered approach (action plan, related legislative trajectories, and output from the rounds of talks) acted as the leitmotif in drawing up this document and the topics it deals with. Please see annex 1 for a systematic overview of the topics, related follow-up and the relation with the points laid down in the action plan to fight terrorism.

Two other conditions underpin the success of the afore-mentioned integrated approach. The first is the international dimension of the various initiatives and actions. This will be touched on in brief per topic.

Secondly, the nature of the paper and its embedding in the action plan means that legislation and government policy are pivotal. Without further clarification, this would not do justice to the long-term collaboration between the state and financial institutions in the field of integrity and crime fighting. The financial institutions themselves also performed outstandingly in the wake of the recent terrorist attacks. In future, prime responsibility will also lie with the financial institutions and their employees on the basis of the cadre offered by the government in this policy paper. This was the case when the earlier Integrity Policy Paper was published in 1997, and still applies, unchanged, today.[5]

One special aspect involves the role of the Dutch National Security Service or BVD. The BVD plays a separate role within the entire system of fighting terrorism; activities are specifically focused at preventing terrorist activities. On the basis of the exceptional legal framework of the BVD and international co-operation, the BVD is able to chart financial transactions that provide insight into networks and individuals, steering mechanisms and financing in the context of terrorism. The activities of the BVD are generally located in a phase in which there is no indication of a concrete offence and police and judicial involvement is not directly implied. To reinforce the efficacy of the BVD, information exchange between the MOT and the financial supervisory bodies (DNB, STE, and PVK) will be assessed to see whether improvements can be made. This subject is explored further in paragraphs 4.6 and 4.7.

Finally, a short geographic contextualisation of this document and its contents in terms of the Kingdom of the Netherlands. The Netherlands, Aruba and the Netherlands Antilles each have their own responsibility in implementing supervision of the financial sector. European regulations do not apply to the Netherlands Antilles and Aruba. The Netherlands Antilles and Aruba are bound to implement UN resolutions, however. Prompted by the incidents of 11 September, the current co-operation between the Netherlands Antilles and Aruba in fighting international terrorism has been stepped up.

The Minister of the Interior and Kingdom Relations visited the Netherlands Antilles in the second half of October to discuss the areas in which co-operation can be intensified. The Netherlands Antilles is presently listing the fields in which Dutch technical assistance is required. The Minister indicated taking a positive approach to such a request. The government of Aruba has also been asked to name the fields in which the Netherlands can contribute to the realisation of measures to fight terrorism. The DNB and the Central Bank of the Antilles are currently in contact with respect to these 'black lists'.

In addition, the Netherlands Antilles and Aruba had already entered into a commitment via the OECD to adjust their tax legislation to international norms and to take action directed at making legislation and its enforcement more transparent. They will also bring about an effective exchange with OECD countries. In these fields, the Netherlands similarly indicated its willingness to provide technical assistance.

Likewise, there is close collaboration between the Netherlands, the Netherlands Antilles and Aruba regarding implementing the recommendations of the *Financial Action Task Force* (FATF) concerning money laundering and tackling terrorism funding.

2. Adjusting financial supervisory legislation

2.1. Introduction

This chapter details key amendments to financial supervisory legislation that (also) serve the goal of fighting terrorism. As was stated in the general introduction, a necessary condition for a more effective fight against terrorism and the corresponding transactions is efficient insight into the financial sector via financial supervision and the supervisory institutions. By virtue of the concise nature of this document, please see the earlier Integrity Policy Paper and correlating progress reports for a detailed description of the financial supervisory legislation.[5]

[5] See footnote 4.

A number of new and current legal trajectories are important in the context of this policy paper, and are described below. The laws concerned are the bill to Actualise and Harmonise Financial Supervisory legislation (Actualisering en Harmonisatie Financiële toezichtswetten) (par. 2.2), supervision of company service providers and money transfers (par. 2.3. en 2.4.) and supervision of the Identification (Financial Services) Act (Wet identificatie bij financiële dienstverlening or WIF 1993), the Disclosure of Unusual Transactions (Financial Services) Act (Wet Melding Ongebruikelijke Transacties or Wet MOT), (par. 2.5.). Finally, the current status and position of the Netherlands is indicated regarding the directive on securities manipulation (par. 2.6).

2.2. Integrity as supervision objective

One of the results of the 1997 Policy Paper on the Integrity of the Financial Sector is the embedding of the integrity theme in exercising supervision by financial supervisory bodies. It has been determined that integrity should be further elaborated as a separate supervision objective. In this context, the bill to Actualise and Harmonise Financial Supervisory Legislation was formulated which, among other things, proposes that supervisory bodies should supervise the integrity of financial institutions. This bill is currently with the Council of State awaiting advice. In this bill, integrity is taken to mean the following:

i) The personal integrity of directors and staff;
ii) The organisational integrity of the financial institution;
iii) Relational integrity;
iv) Integrity with respect to the financial body's behaviour on the market.

i) The financial bodies have a liability for maintenance regarding the personal integrity of their directors and staff. Action points when supervising personal integrity are fraud and corruption. This may involve unlawful withdrawals from which advantages are derived and the concealment of these withdrawals by means of manipulation (of data).
   Conflicts of interests between the directors and staff of financial bodies are another key attention area. Conflicts of interests can be taken to include subsidiary functions in business contacts.
ii) The organisational integrity of the body involves the internal procedures and measures in the field of administrative organisation and internal control to combat unlawful behaviour.
iii) Relational integrity relates to the market behaviour of the financial institution in its contacts with third parties and to the behaviour of third parties demanded by the integrity of the financial body, such as insurance fraud. The financial bodies may, inter alia:
   - apply the "customer due diligence" principle;
   - compliance of financial institutions with the duty to disclose and to identify in the context of the Wet MOT and the WIF 1993;
   - follow up warnings as a result of recommendation 21[6] and other relevant recommendations, such as training courses and information for the staff of financial bodies, provided by the Financial Action Task Force; and
   - compliance with the applicable stipulations of sanctions legislation.
iv) Integrity relating to the market behaviour of financial bodies can be considered to mean preventing securities manipulation and securities stabilisation concerning share issue, 'steering' securities to influence other related transactions (such as forcing securities indices on expiry dates) and things like "front running".

Current supervisory legislation already includes a number of integrity aspects. The reliability of directors and (co) policy makers is thus included as a licensing requirement.

On the basis of current supervisory legislation, the supervisory bodies can give guidelines for the administrative organisation and internal control and attempt to prevent conflicts of interests. They have

[6] Recommendation 21 provides for heightening guardedness of financial institutions when performing transactions for their clients. If these transactions seem suspicious they should be investigated to aid supervisory bodies and investigative agencies.

also made use of these guidelines (for instance the guideline of supervisory bodies for private investment transactions and the administrative credit guideline).

The bill explicitly states that supervision partly includes evaluating proper administration of the supervised institutions. Proper administration will be included as a constant licensing condition in the financial supervision laws. The institution is required to permanently meet this condition, not only when initially applying for a license.

With regard to the various aspects of integrity as outlined above, a separate basis provides a supplement to the current grounds for rules concerning administrative organisation (AO) and internal control (IC). The new stipulation relating to integrity aspects shall be complementary to the stipulation on AO/IC. The new integrity stipulation shall have a broader effect than the current stipulation on which the guidelines relating to integrity aspects are based.

It is anticipated that through or pursuant to Order in Council the supervisory body will be able to prescribe rules regarding a number of aspects of integrity.

The current guidelines relating to aspects of integrity remain in force but hereby gain a different legal basis.

The above adjustments partly interrelate with initiatives relating to the FATF and are partly national proposals. Where the latter is the case, in the light of current developments, this approach will also be reinforced by efforts undertaken in the framework of the EU and OECD with the aim of placing these aspects of integrity on the agenda in a broader context.

2.3. Supervision of company service providers and financing companies

Company service providers[7] are entrusted by other companies with the management of legal entities generally based in the Netherlands but whose economic activities lie largely outside the Netherlands. This management includes taking care of the administration and organising shareholders meetings. Besides these managerial activities, company service providers also undertake other activities such as managerial and administrative services for securities transactions and real estate investments. For international companies on whose behalf company service providers work, it is often cheaper to contract out management activities to company service providers than to employ staff in the Netherlands for that purpose. In these activities, the company service provider acts as in a confidential capacity for the company whereby the company service provider is often contractually bound to a duty of secrecy.

Company service providers can administer different types of legal entities including financial institutions. These are bodies (not supervised credit institutions) that, in brief, receive funds repayable on demand , which they loan to third parties. The most common types of financing companies are the group companies of large international groups that manage financing flows within a concern context. In monetary jargon they are often referred to as special financial institutions or SFIs[8]. A considerable proportion of these finance companies are referred to for tax purposes as conduit entities. In the Netherlands, the transfer bodies are companies that are legally domiciled in the Netherlands and are part of a foreign concern. The conduit entities transfer money flows originating internationally and that are – directly or indirectly – channelled back overseas. Their location in the Netherlands is often aimed at using tax benefits. A rough estimate places the number of company service providers in the Netherlands at several hundred and finance companies at some 10,000, including a few thousand conduit entities.

[7] The term 'company service providers' does not refer to the Anglo-American legal entity 'trust' that is unfamiliar in the Netherlands.

[8] The terms EFI, and company service provider are not used uniformly in the literature. This document only uses the umbrella term "finance company", which includes EFIs and money transfer companies.

Company service providers are not supervised. However, a variety of credit institutions carry out trust activities. These activities are included by the DNB in the corporate economic supervision based on the Credit System (Supervision) Act (Wet toezicht kredietwezen 1992 or WTK 1992). To some extent, this also applies if the trust activities of a credit institution are placed in a subsidiary company. The WTK 1992 then gives the DNB resources to supervise the credit institution and investigate these activities. On the basis of article 57 of the WTK 1992, information can be obtained from the subsidiary and the certificate of no objection enables checking various elements of the subsidiary company with an eye to the position of the credit institution (such as directors and activities). Trust activities are also conducted by companies that are not affiliated to credit institutions such as financial, tax or legal advisers (these are not covered by the WTK supervision of the DNB).

Finance companies, like company service providers, are not supervised. Because they receive funds repayable on demand , then lend or invest these sums, they are covered by the definition of credit institutions included in article 1, first paragraph (a), WTK 1992. They are excempted from the definition – and thus the effect – of the WTK 1992 because of a Ministerial regulation if they, in brief, do not obtain public monies or if the credit extended or investments are almost solely situated within the concern and the company heading the concern has issued an unconditional guarantee for the debts entered into by the financing company[9].

The fact that company service providers and finance companies are in principle not supervised, combined with the often large flows of money with which these companies are involved, may make them vulnerable to use by criminals, particularly when it concerns money laundering, terrorist financing and tax evasion. This is particularly the case if the transactions, with or without the aid of the company service provider, run from or to offshore centres. The legislation in these offshore centres often obstructs obtaining detailed information because, for instance, it is covered by stringent banking secrecy or because the offshore centre took insufficient action against money laundering or terrorist financing.

Because of this vulnerability to being used by criminals, the national action plan to fight terrorism and promote security announced that company service providers would be placed under supervision. This supervision will not only focus on the company service providers but will also include the similarly vulnerable financing companies such as the conduit entities. The goals of this supervision are two-fold. Firstly, the integrity of managers, commissioners and shareholders of company service providers and financing companies will be tested. This enables ascertaining whether these companies maintain links with persons and organisations appearing on the various terrorist lists and – if this is the case – of taking action against them. The second supervisory goal is the transparency of money flows. The financing companies in particularly will need to give the supervisory body information on the scale and type of financial flows acquired then lent or invested by the company. Rules will be issued on the way in which the administrative organisation and internal control (AO/IC) of the company service providers and finance companies will need to be structured. As part of this integrity supervision, the Wet MOT and the WIF will be applied to services carried out by company service providers and financing companies where active supervision will be exercised on compliance with the duty to provide identification and to report[10]. Comparable to credit companies, the contractual duty of secrecy company service providers must observe towards their clients will not impede their statutory duty to disclose or to provide the relevant information to the supervisory body.

Supervision of the finance companies and company service providers will be structured along three lines.

[9] Regulation of 4 February 1993 of the Minister of Finance to implement article 1, third paragraph of the Credit System (Supervision) Act (Wet toezicht kredietwezen 1992).

[10] See also paragraph 2.5.

Firstly, the DNB will more emphatically include the trust activities of credit institutions in standard supervision on the basis of the WTK 1992. Existing integrity requirements and rules regarding the AO/IC of credit bodies will be tightened up where possible to counter financing terrorist activities. Tightening up integrity requirements also applies to cases in which the credit institutions have placed trust activities in a separate subsidiary. In that case, the DNB will instruct credit institutions to set up integrity assurances and adequate rules on AO/IC for subsidiaries carrying out trust activities. Compliance with these rules will be strictly monitored. On the basis of article 57 of the WTK 1992, the DNB will ask the subsidiary for the required information.

If the DNB runs into irregularities or if the credit body or subsidiary refuses to co-operate, the DNB has a range of coercive measures at its disposal. The company can be issued with an instruction or an administrative penalty or fine can be imposed. With regard to the subsidiaries of credit bodies, the instrument for a certificate of no objection can be used if necessary if a credit company requires such to participate in the subsidiary (article 23 WTK 1992).

If, for instance, a trust subsidiary of a credit body refuses to co-operate, the certificate of no objection required for the participation will be withdrawn. A new certificate can be issued with the provision that the requisite information must be provided to the DNB. If the DNB is becomes aware of an offence on the basis of article 161 of the Code of Criminal Procedure during its supervisory duties, it must report it. The DNB has indicated its intention to make use of this right, especially if it involves an offence that could be terrorism-related.

The second key measure included in the Ministerial rule on the basis of which finance companies[11] are excepted from the WTK 1992, are the extra conditions to be met by the financing companies if they are to be considered credit institutions in the sense of the WTK 1992. Every finance company must report to the DNB, stating the names of the directors, commissioners, policy-makers and the most important shareholders. These directors, commissioners, policy-makers and shareholders must be trustworthy. What makes a person trustworthy should be based on the criteria laid down in the Policy Rule on the trustworthiness of (candidate) (co) policy-makers and holders of qualified participations in supervised institutions[12]. Further, the finance companies must take organisational measures geared to the integrity of the day-to-day running. The institutions must identify their clients, be aware of where funds acquired by the company originate and identify and avoid irregular transactions. If an institution does not meet the conditions, it may not invoke the exemption and violates the prohibition of operating as a credit body without a license (article 6, WTK 1992). In that case, it can be prosecuted. If circumstances give cause and commensurate with agreements made in this regard with the Public Prosecutions department, the DNB can also take administrative action on the basis of the WTK 1992. The amendment to the Ministerial rule will take effect at the start of December 2001. Given that new criteria are imposed on the organisations involved that could have significant impact for some, they will be allowed a period of time to meet the conditions. The period is expected to be 6 weeks, within which time they should report to the DNB and meet the trustworthiness criteria and 3 months to implement the organisational measures. To realise broader and more intensive supervision of company service providers and finance companies, this regulation will be replaced in 2002 by a separate supervision act (see below).

Thirdly, legal and tax advice, similar to the services provided by company service providers, will also be placed under the Wet MOT and the WIF; compliance will be actively supervised. This will be done

[11] The exact delineation of the finance companies to be placed under supervision is currently being considered in consultation with the DNB. This way, companies already in possession of a license on the grounds of the Consumer Credit Act could remain exempted.

[12] Policy rule of De Nederlandsche Bank N.V., the Stichting Toezicht Effectenverkeer, the Stichting Verzekeringskamer and the Minister of Finance, Netherlands Government Gazette 2000, 78.

through Order in Council based on the Wet MOT and the WIF and is possible after the entering into force of the bill concerning those trading in high value items[13], which is expected at the end of this year.

This way, company service providers and finance companies are obliged to identify their clients when providing legal and tax advice, and irregular transactions must be reported. The finance companies will also be placed under the Wet MOT and the WIF.

The raft of measures will ultimately be integrated and perfected in a single act on the supervision of company service providers and finance companies. This legal basis is required to supervise company service providers and financing companies that are not allied to credit bodies. Given the urgency of completing the supervision in a short period, this bill has been assigned special priority. The bill is expected to come into effect in 2002. Pursuant to this supervision act, company service providers and finance companies must be admitted by the supervisory if they wish to offer their services. This supervisor will be given extensive powers to conduct an antecedent survey into the managers of company service providers and finance companies. If the trustworthiness of the (intended) directors, policy-makers, commissioners or shareholders is such that the integrity of the financial system could be impaired, the company service provider or finance company will not be admitted and will not be able to carry out its activities.

Company service providers and finance companies will also be obliged to report, which will provide insight into the money flows passing through the finance companies. The supervisor will formulate rules relating to the (proper) running of a business and to the administrative organisation. These requirements help the supervisory body to monitor the money flows and prevents criminals and terrorists making use of the services of company service providers.

Because companies in other countries will carry out similar activities to the company service providers in the Netherlands, it is desirable to stimulate the same kind of supervision in and by other countries. Within the EU, the Netherlands has already taken the initiative. Working with the FATF, company service providers are an integral part of the future FATF recommendations (which are currently being revised). This brings about more efficient international terrorism prevention and also ensures that a particular country's appeal as location for financial activities is not influenced by quality differences of supervision.

On 3 October 2001, the Country Ordinance on supervision of fiduciary companies entered into force in the Netherlands Antilles[14]. This regulation introduced supervision of company service providers. Company service providers are monitored for professionalism, integrity and solidity. The Supervisory Board for fiduciary companies issues licenses and supervises activities.

Aruba is also working on a statutory regulation to introduce the supervision of company service providers, to which end a draft bill has been presented to the IMF for consultation. This act is expected to come into force in the start of 2002.

2.4. Reinforcing the supervision of money transfer systems

A money transfer is a financial product whereby a client can send, in a matter of minutes, money to a beneficiary (generally overseas) via a money transfer office. The money itself is not transferred. The system is based on the client's faith in the money transfer office that ensures that the money reaches the beneficiary and on the reciprocal confidence of money transfer offices that settle the debts between themselves.

[13] Parliamentary documents II, 2001-2001, 28 018

[14] Country Ordinance of 3 August 2001 laying rules on the supervision of fiduciary companies (publication page number 81).

The money transfer means that money can be transferred rapidly and cheaply without involving a physical financial transfer. Because the money transfer offices don't settle their mutual debt straight away and because the beneficiary often receives his money by way of a code word and without adequate identification – unlike standard money transfers at a bank – the paper trail and administrative process cannot be tracked.

For criminals and terrorists the lack of a paper trail and the anonymity of the principal or the beneficiary are reasons for using money transfers to transfer the proceeds of criminal activities or money to finance terrorist activities.

Investigation also show that money transfers are prevalent in underground banking. Money transfers were brought under the duty to report unusual transactions (Wet MOT) as early as August 1998. Like bureaux de change and credit companies, money transfer offices are not supervised to see that they comply with the Wet MOT duty to report. However, there is a degree of general supervision of money transfer offices. They should be eligible for dismissal on the basis of article 82 Wet toezicht kredietwezen 1992 (WTK).

This discharge is provided, among other things, on condition that, each year, the policy-makers conduct a trustworthiness test, a bank guarantee is made available and the DNB is forwarded an audit report. Granting discharges in the context of article 82 of the WTK and imposing fines and penalties was mandated to the DNB on 14 October 2001[15], prior to the planned supervision based on the Wet inzake de geldtransactiekantoren (Act on Money Transfer Offices).

Moreover, violations of the Wet MOT and the WTK are economic offences, which can be reported to the Public Prosecutions Department.

For broader and more intensive supervision of all money transfer offices, a supervision act (Act on Money Transfer Offices) is being drafted, comparable to the supervision of money exchange offices. Supervision of money transfer offices is expected to have a preventive effect.

In accordance with this supervisory act, money transfer offices will need to register with the supervisory body. This supervisory body will be given extensive powers to carry out research into the antecedents of the directors of money transfer offices. If, on the grounds of the trustworthiness of the (intended) directors, the integrity of the finance system could be violated, the money transfer office will not be registered and they will not be able to carry out their activities. The money transfer offices will also be obliged to draw up reports. The supervisory body will be given extensive powers of acquiring information and will be able to formulate rules regarding the (proper) operation and administrative organisation. These requirements facilitate the supervisory body's control of money flows, and prevents criminal and terrorists from abusing the services of money transfer offices.

To assure the integrity of the financial sector and to tackle underground banking, co-operation between supervisory bodies and investigative agencies is essential. This collaboration will work to counter underground banking and ensure taking effective measures against criminal and terrorists attempting to misuse money transfers.

2.5. Reinforcing the supervision of the duty to identify clients, and the duty to disclose unusual transactions

At present there is no statutorily regulated supervision of compliance with the duty to report of the Wet MOT and WIF 1993. However, based on the Wet op de Economische Delicten (Economic Offences Act), the FIOD-ECD can instigate a criminal investigation if there are indications that these duties are not being fulfilled. To

[15] Netherlands Government Gazette, 12 October 2001, 198.

promote the proper effect of the Wet MOT and the WIF, and to act in concurrence with criterion 1[16] of the Non Co-operative Countries and Territories (NCCT) exercise of the FATF, thorough supervision of compliance with the Wet MOT and WIF is imperative. To facilitate this, the Wet MOT and WIF will be expanded with a paragraph on supervision.

This takes place through the bill on dealers in high value goods[17]. Once this bill has entered into force, the aim is to incorporate supervision of disclosing and identifying institutions in standard supervision.

The FIOD-ECD is responsible for dealers in high value goods, the three financial supervisory bodies (DNB, PVK and STE) for WTK, WTE, WTV and WTB bodies, money transfer offices, intermediaries, advisers, casinos, credit card companies and company service providers.

Further allocation will also take into account the findings of the consultation process on the supervision of intermediaries and financial services. A consultation process of this sort is also being held for the other independent professionals.

To avoid misunderstandings, it is noted that the FIOD-ECD will remain the investigative body for violations of the duty to disclose information and identify clients.

The bill to Actualise and Harmonise Financial Supervisory Legislation proposes making integrity an explicit goal of the supervision, which is taken to include supervision of the duty to disclose unusual transactions arising from the Wet MOT and the duty to identify clients based on the WIF.

The act on money transfers offices regulates the same for bureaux de change and money transfers offices. This aims in due course to base supervision of the duty to disclose based on the Wet MOT and the duty to identify clients arising from the WIF for financial institutions, on the articles concerning proper business operations contained in the supervisory legislation.

This gives the advantage of a broader range of supervisory tools that includes penalties and fines. Finally, the aim is to expand supervisory instruments, through new legislation, with regard to credit card companies, assurance intermediaries, casinos, dealers in high value goods and the independent professions with regard to compliance with the duty to disclose arising from the Wet MOT and the WIF so that – where relevant – the same scope that applies to financial institutions currently under supervision, will be created. By way of clarification, the following is noted. Where the supervisory tools include penalties and fines in the context of financial supervisory legislation, this option does not yet exist for supervision based on the Wet MOT and the WIF 1993. Furthermore, financial supervisory legislation will provide for the supervision of integrity and customer due diligence. Partly depending on the revision of the recommendations of the FATF (see par. 3.2), this will also need to be taken into account.

2.6. Insider dealing and market manipulation

The raft of measures of the EU financial services action plan includes the proposal published on 30 May 2001 for a directive 'on insider dealing and market manipulation (market abuse)'.[18] In brief, the directive aims to harmonise current legislation in the European Union and to arrive at an integrated and efficient internal market for financial services.

---

[16] Criterion 1 of the NCCT exercise contains insufficient legislation and insufficient supervision of financial institutions.
[17] Amending the Disclosure of Unusual Transactions (Financial Services) Act and the Identification (Financial Services) Act aimed at obligating those dealing in high value items obligated to identify their clients and to disclose usual transactions.
[18] COM (2001) 281 final, hereafter referred to as the market abuse guideline.

The market abuse directive builds on the current directive on insider dealing.[19] The difference is that in the market abuse directive is provided with a tighter and stricter prohibition stipulation of insider dealing and that, in addition, 'tips' from insider dealing and market manipulation is banned.

For the rest, the market abuse directive contains a duty to make public, a uniform supervision regime under the aegis of a single supervisory body and intensive co-operation between supervisory bodies. By providing one supervisory body per Member State that reinforces the co-operation between the supervisory bodies in the various Member States, enforcing the prohibition prescriptions regulating the use of insider dealing and market manipulation are taken to a higher level.

The EcoFin of 21 September formulated the action point that, in the context of this guideline, attention should be given to measures to prevent (financing) terrorism. In the meeting of 16 October, the importance of this action point was underlined. The Belgian chair has since increased the frequency of the meetings to reach a speedy realisation of the directive and has placed the theme of preventive measures on the agenda. The EcoFin meeting of 14 December 2001 is expected to focus on an initial discussion of the market abuse directive. At present, the Commission and the Member States are assessing which ways in which the directive can be reinforced given other assurances in the securities legislation/supervision to prevent using insider dealing/market manipulation. In this context, the CESR[20] asked whether, if the source of the insider dealing is elsewhere - as was the case in the attacks in the US – it was still covered by the prohibition stipulation.

3. Legislation on money flows

3.1. Introduction

National and international initiatives on unusual and suspect transactions originally focused on combating money laundering, specifically the proceeds of drug trafficking and organised crime. This was later expanded to include other types of money laundering and to investigating other suspect money flows. The initiatives were also extended to other sectors because the more stringent monitoring in the financial sector prompted money laundering activities to shift towards such areas as the property sector and the trade in high value items. The goal of this chapter is to place legislation and policy in the field of unusual and suspect money flows in a systematic framework. To this end, paragraph 3.2 first outlines a survey of the work of the Financial Action Task Force (FATF) in this area. Paragraphs 3.3. up to and including 3.8 deal with the national and international context surrounding unusual and suspect transactions; this is partly interlinked with FATF initiatives.

3.2. International co-ordination of efforts to combat money laundering

3.2.1. Description of the task of the FATF

At international level, the co-ordination of combating money laundering and tracing suspect money flows takes place in various fora. The most important forum in this context is the *Financial Action Task Force on money laundering* (FATF), set up in 1989, that aims to organise the fight against money laundering and terrorist financing.

At the end of October 2001, during the extra plenary meeting of the FATF in Washington, it was decided to expand the mandate of the FATF to include terrorist financing.

The participating countries have given their support to 40 recommendations and the 25 NCCT criteria[21] relating

[19] Guideline of the Council dated 13 November 1989 to coordinate insider transactions (89/592/EEC), OJ *EC* 1989, L 334/30.
[20] Committee of European Securities Regulators.
[21] NCCT: Non Cooperative Countries and Territories. Using 25 criteria, a specific area or country is assessed for shortfalls in the field of worldwide anti-money laundering efforts.

to combating money laundering and 8 supplementary recommendations regarding tackling terrorist financing and have undertaken a commitment to implement them. The FATF is not an official organisation and has no official powers. The co-operation is based on peer pressure, which has proven effective.

The core of the recommendations and the NCCT criteria of the FATF consist of the following elements.
- Adequate criminalisation of money laundering and terrorist financing.
- Adequate disclosure systems for unusual/suspect transactions.
- Assurance of an adequate paper trail and client knowledge (customer identification/record keeping/no negotiable papers etc.).
- Effective supervision of the financial sector (integrity/trustworthiness, business running/administrative organisation, solvability/liquidity, customer due diligence etc.).
- Effective enforcement of suspect/unusual transactions (including asset freezing and confiscation).
- Effective (inter)national collaboration/information exchange (administrative and legal).

29 countries currently belong to the FATF (Argentina, Austria, Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, the Kingdom of the Netherlands, Luxembourg, Mexico, New Zealand, Norway, Portugal, Singapore, Sweden, Switzerland, Spain, Turkey, the United Kingdom and the United States and two regional organisations (EU Commission and the Gulf Co-operation Council) which means that all developed financial centres are currently part of the FATF.

In the FATF meetings, the Netherlands is represented by the Ministry of Finance (delegation leader), the Ministry of Justice, a representative of the Netherlands Antilles and a representative of Aruba.

3.2.2. Key attention points of the FATF
The attention of the FATF is currently directed at the following main points
1. Improving compliance with the 40 recommendations by the FATF members.
2. Taking action against non-cooperative countries and territories (NCCTs).
3. Following trends and techniques in the field of money laundering and terrorist financing.
4. Fighting terrorist financing.

Ad.1 *Improving compliance by FATF members.*
To monitor the implementation of the 40 FATF recommendations and the 25 NCCT Criteria relating to fighting money laundering, two monitoring instruments are used – the mutual evaluations and the self-assessment exercise.

The mutual evaluations involve sending a team of three experts (financial, legal and law enforcement), from different countries, plus a member of the FATF secretariat, to a country. Based on their findings, the evaluators write a confidential report that is discussed in the FATF. The public annual report of the FATF only presents the conclusions of such an evaluation; the Netherlands is one of the few countries to have published its evaluation (1998).

The second monitoring instrument for the FATF is the "self assessment exercise". For this, the FATF has drawn up a detailed questionnaire, which asks specific questions about how the 40 recommendations are being implemented. The FATF will apply the same system to the 8 supplementary recommendations on tackling the terrorism financing.

Ad.2 *Taking measures against non-cooperative countries and territories (NCCTs).*
The NCCT exercise carried out by the FATF is a key and successful initiative. In the context of this exercise, the FATF uses the 25 NCCT criteria (see the annex to annex A of the FATF annual report 1999/2000) to ascertain whether countries are taking sufficient action against money laundering. When countries show serious systematic shortfalls, they are placed on the NCCT list; this list is public.

The following countries are on the present NCCT list: the Cook Islands, Dominica, Egypt, Grenada, Guatemala, Hungary, Indonesia, Israel, Lebanon, the Marshall Islands, Myanmar, Nauru, Nigeria, Niue, the Philippines, Russia, St. Kitts and Nevis, St. Vincent and the Grenadines and the Ukraine.

When a country is on the FATF black list, the members of the FATF must give extra attention to transactions with the NCCT countries as a counter measure. The lack of an anti-money laundering system is a contra indication for carrying out financial transactions with a country. The FATF considers taking additional counter measures against the Philippines and Nauru should it emerge that legislation recently implemented by the Philippines in the area of money laundering is inadequate and should Nauru appear to have failed to implement sound laws by the end of November 2001. The supplementary counter measure involved: increased attention for identification and for disclosing unusual/suspect transactions; not issuing licenses to financial institutions/individuals from an NCCT country, alerting public law notaries, advocates, accountants and other relevant independent professionals.

Ad.3 *Following trends and techniques re. money laundering and terrorist financing*
An important annual exercise involves revising new trends and techniques in the field of money laundering and related issue of which other professions and services should be covered by the anti-money laundering provisions.

In the context of this exercise, the FATF focused on the following matters during the typology meeting in Wellington on 19 and 20 November 2001

- Correspondent banking.
- Private banking and money laundering
- Bearer documents.
- Co-operation between criminal organisations.
- The introduction of the Euro.
- Terrorist financing.

Ad 4. Terrorist financing
During the FATF extra plenary of 29 and 30 October 2001 it was decided to expand the activities of the FATF to include combating finance flows for terrorism (see annex 3). The aim of the expansion is to deny terrorists and those who support them, access to the financial system.

To combat terrorist financing, the FATF adopted 8 specific recommendations. In combination with the current 40 recommendations and the 25 NCCT criteria to combat money laundering, a context for effectively tackling terrorist financing has thus been created. The following recommendations have been adopted.
1. Ratification/implementation the conventions and UN resolutions on terrorist financing
2. Criminal action against terrorist financing, terrorist acts and terrorist organisations.
3. Scope for freezing and confiscating possessions relating to terrorist financing terrorist acts and terrorist organisations
4. Prompt disclosure to the Office for the Disclosure of Unusual Transactions/Financial Intelligence Unit of transactions possibly relating to terrorist financing, terrorist acts and terrorist organisations.
5. The greatest possible international co-operation in administrative and criminal prosecution contexts to tackle terrorism. Furthermore, countries take every possible precaution to ensure they cannot serve as a safe haven for terrorist financing, terrorist acts and terrorist organisations.
6. Placement of money transfer systems/institutions under supervision (including licensing/registration, sanctions).
7. Wire-transfers transactions (cashless payments) and transactions performed by money transfer organisations with respect to the sender and the beneficiary.
8. Finally, countries take steps where necessary, given the vulnerability of non-profit organisations for terrorist financing, to prevent these organisations being abused by terrorist organisations.

To assure speedy implementation of the recommendations (by June 2002 at the latest) the FATF has agreed the following action plan.
- By the end of 2001 at the latest, the members and non-members of the FATF will carry out a self-assessment of the 8 new recommendations and draft an action plan for points that are still open.
- In February 2002 the FATF will work on guidelines for financial institutions on the recognition of terrorist financing
- In June 2002, the FATF will start a specific NCCT exercise including taking counter measures with regard to countries that have taken insufficient actions to combat terrorist financing.
- Regular publication of frozen assets belonging to terrorists, in accordance with the relevant UN conventions/resolutions.
- Give technical support to non-members.

With regard to implementing the 8 recommendations to fight terrorism, the situation in the Netherlands is as follows:
Ad. Recommendation 1: With regard to the current status of enforcing and implementing the various UN treaties on terrorism, please see paragraph 3.3.
Ad. Recommendation 2: The Ministry of Justice is working on elaborating the specific criminal action to be taken against terrorist crimes and against taking part in terrorist organisations.
Ad. Recommendation 3: With regard to the scope for asset freezing and confiscation of terrorist financing, please see paragraph 3.3.
Ad. Recommendation 4 : the disclosure of unusual transactions in the context of terrorist financing should be arranged via the Wet MOT by expanding the subjective indicators with combating terrorist financing. To this end, the Wet MOT should be adjusted, taking account of the specific criminal action taken against terrorist financing. The Ministries of Finance and Justice are currently elaborating this point.
Ad. Recommendation 5 : International collaboration as such is well organised in the Netherlands.
Ad. Recommendation 6 : With regard to money transfer systems, the bill on money transfer offices, which includes money transfer companies, will shortly be presented to the Council of State for emergency recommendations (see paragraph 2.4.)
Ad. Recommendation 7 : With regard to the sender of financial transactions, the WIF 1993 is already applicable. With regard to the beneficiaries, the introduction of the concept of customer due diligence in the context of the Bill to Actualise and Harmonise Financial Supervisory legislation is key. The Council of State is currently considering the bill.
Ad. Recommendation 8 : the abuse of non-profit organisations for terrorist purposes is being further investigated.

Current topics
Revision of the 40 recommendations
In the year 2000 – 2001 under review, the revision of the 40 recommendations commenced. This was prompted by experience with the effects of the recommendations to date and the differences in interpretation that have arisen among the members regarding implementing certain recommendations. Another reason for the revision is current developments in money laundering. Over the last few years, the focus of money laundering policy was the financial sector. Partly due to this, money laundering has shifted to other sectors internationally, now focusing on the real estate sector and diamond trade.

In this regard, the 40 FATF recommendations should be supplemented. In this regard, the FATF is expected to follow the draft European directive on money laundering that sets out a duty to disclose for real estate agents, tax consultants, accountants, lawyers, public law notaries and dealers in high value goods. Furthermore, during various meetings the specific dangers for preventing money laundering posed by the Internet and new forms of payment, were indicated. In addition, the miss-use of companies in tackling money laundering and fighting crime are also a cause for concern.

The FATF formed 3 work groups to tighten up the recommendations. The main lines of the increased stringency are: customer due diligence (specifically a comprehensive approach: acceptance policy, identification of clients and monitoring transactions using risk profiles) tackling the misuse of companies and attacking money laundering and financing terrorism via non-financial sectors (dealers in high value goods and the independent professions).

3.3.3. 3rd mutual evaluation of the Netherlands by the FATF.

The third round of mutual evaluations will probably commence in 2003. The Netherlands started preparations at the end of 2000.

At present there are various initiatives to reinforce the Dutch system to combat money laundering and terrorist financing. Besides legislation to strengthen the battle against terrorist financing the specific measures below are also being taken:

- Reinforcing the investigation and prosecution framework to heighten results in the money laundering system in terms of convictions, confiscations and so on. In this regard, the BLOM (Bureau to support the National Money Laundering Officer) has already introduced the HARM provision (Hit And Run Money Laundering). Given the success of the HARM provision in terms of prosecution and confiscations[22], this tool, introduced in the spring of 2001 and due to expire at the close of 2003, will be made structural. Further reinforcement of the investigation and prosecution context is under preparation (see par. 4.7);
- The Upper House is currently considering a bill to introduce separate punishment for the crime of money laundering. At present, money laundering is still one of the offences covered by the handling of stolen goods provision in the Criminal Code (see par. 3.6);
- The bill on money transfer offices will shortly be presented to the Council of State. It is intended to expand supervision of money transfer organisations with reinforced supervision of money laundering companies (see par. 2.4);
- The Council of State is considering an adjustment to the WIF 1993 aimed at tightening up the identification of clients wishing to open bank accounts (see par. 3.4);
- The Lower House is considering the bill on dealers in high value goods. The bill is intended to place dealers in high value goods (vehicles, antiques, art and so on) under the duty to identify clients and to disclose as laid down in the wet MOT and the WIF 1993 (see par. 3.4)[23]. In addition, the aim is that once this bill has entered into force, the independent professions will similarly be subjected to the same duties in the context of the wet MOT and the wet WIF by means of Order in Council (see par. 3.4).
- Finally, this bill will tighten up supervision of the Disclosure of Unusual Transactions Act and Identification of Financial Services Act by making it the responsibility of the supervisors of financial institutions; this is currently enforced by the FIOD-ECD on the sole basis of the Economic Offences Act (see par. 2.5).
- The Council of State is considering a bill to actualise and harmonise supervisory legislation. Among other things, the bill provides for complete supervision of integrity including the ability of supervisors of financial institutions to formulate guidelines on integrity to stimulate such things as customer due diligence, the implementation of the sanctions policy and implementation of relevant recommendations of the FATF (see par. 2.2).

  The Council of State is considering a bill on disclosure by customs to the Office for the Disclosure of Unusual Transactions on the usual transportation of money and equivalent items. To ensure that customs can report the unusual transportation of money and equivalent items that it discovers, a statutory rule is required. The current options for customs are too limited to allow this (see par. 3.4.1).

[22] Since 1 April 2001, a total of 36 suspects were arrested in 30 of the cases detected, and 7 million guilders was confiscated.

[23] Adjusting the Wet melding ongebruikelijke transacties and the wet identificatie bij financiële dienstverlening 1993 with an eye to making the duty to identify clients mandatory and to make the duty to disclose unusual transactions compulsory for deals in high value items, parliamentary documents II, 2001-2002, 28 018.

- A work group is analysing the vulnerability of bearer securities with regard to money laundering (see par. 3.5.).
- A bill is being prepared to introduce integrity supervision relating to company service providers that manage these institutions (see par. 2.3).
- As of 1 January 2001, the FIOD-ECD also set up a money laundering knowledge centre (see par. 4.3.).

The above measures respond to the process of tightening up the 40 FATF recommendations and the 3rd mutual evaluation of the Netherlands by the FATF scheduled for 2003.

3.2.4. Other relevant international fora
Closely related to the FATF NCCT initiative are the efforts of the OECD to counter damaging tax competition, particularly regarding tax havens. In June 2000 the OECD adopted a report containing a list of 35 tax havens that must commit to the OECD process. If they fail to do so, the OECD countries will apply a framework of defensive measures.

The commitment the tax haven must give should include that the tax haven makes its tax system transparent and will share information effectively. This will provide more insight into the flows of money to and from tax havens and give a more detailed picture of those who ultimately benefit from these money flows. To date, 11 tax havens have committed, including the Netherlands Antilles and Aruba. These committed tax havens work with the OECD to set up a tool for effective information exchange. The expectation is that, before the end of this year, agreement on the content of a tool of this nature will have been reached.

Financial supervisory bodies also collaborate internationally, whereby a great deal of attention is given to fighting money laundering and to tracking suspect money flows. Bank supervisors work together in the Basle Committee, securities supervisors in the IOSCO[24] while insurers are united in the IAIS[25].

The Financial Stability Forum (FSF), working in collaboration with the International Monetary Fund (the IMF) has also taken a number of initiatives to reinforce supervision of the financial sector in offshore financial centres. De Nederlandsche Bank gave technical assistance to Aruba and the Netherlands Antilles in carrying out a self-assessment. The IOSCO also set up a special project team on 12 October 2001 to prepare measures taken by securities commissioners against abuse of the financial system by terrorists.

3.3. Asset freezing
This paragraph provides an overview of steps that have been taken directed at freezing the assets of terrorists in an international and national context.

3.3.1. International
On 15 October 1999 the UN Security Council adopted Resolution 1267 (1999). In this resolution the Security Council requests the Taliban to hand over Osama bin Laden to the authorities stated in the Resolution immediately, and to freeze the Taliban's assets.

Next, the Security Council adopted Resolution 1373 on 28 September 2001. This relates to an extraordinary resolution set up to tackle peace and safety in the entire world – terrorism as a whole – not just in a specific geographic territory.

[24] IOSCO: International Organisation of Securities Commissions
[25] IAIS: International Association of Insurance Supervisors

The European Union carried out the 1267 UN resolution in various regulations that have a direct effect in all Member States. This happened initially in regulation 337/2000 of 14 February 2000, later expanded and reinforced (as a result of UN Resolution 1333 of 19 December 2000) in the regulations of 6 March 2001 (467/2001), 4 July 2001 (1354/2001) and of 11 October 2001 (1996/2001). The regulations apply, among other things, to the territory of the EU, all EU citizens and all legal persons and entities or bodies set up according to the law of a Member State.

The financial sanctions based on the UN list added as an annex to the various EU regulations comprise freezing the assets of any type of persons, entities or bodies on the black list, and a ban on providing them with finance. This publicly available list contains Osama bin Laden, the members of the Al-Qaida organisation and persons, entities and bodies of the Taliban regime.

The UN Taliban Sanctions Committee determines who is placed on the black list in the context of the UN 1333 resolution. The European Commission is authorised to amend the list applicable to the EU on the basis of recommendations of the UN Sanctions Committee. The latter occurred several times, the last time on 19 October in regulation 2062/2001 (see also below).

Besides the above mentioned UN list, there are a number of other lists:
- A secret FBI *watch list*;
- A list of 27 individuals and organisations of president Bush, included in the *Presidential Order* of 24 September;
- A list of 39 names published by the American Minister of Finance on 12 October (the Treasury List);
- A list of 22 organisations considered as terrorists by the US. This list was published on 2 November. Among other things, the US asked the Netherlands to freeze the assets of these organisations to ban the provision of financial resources to them;
- A list of 62 individuals and organisations related to the Taliban and Al Qaida. This list was published on 7 November.

The FBI list is a "watch list" and contains confidential information. The list may only be used for the purpose for which it was provided (investigating possible terrorists and their financial resources). Publication of this list may jeopardise the investigation.

At the start of October, the UN Sanctions Taliban Committee supplemented its own UN list with the Bush list and published it on 8 October. The European Commission altered the black list of existing EU Taliban Regulation (467/2001) on 11 October, partly in the light of the 1373 UN resolution, in regulation 1996/2001 (expanded with the Bush list). On 17 October, the Sanctions Committee again supplemented the UN list, now by including the names contained on the above-mentioned Treasury List. The EU also adopted this alteration, this time with regulation 2062/2001.

In addition to the above trajectory, on 2 October 2001, the European Commission presented a new draft regulation that facilitates taking decisive measures to countering terrorist financing world-wide. The regulation carries an appended 'open' list that can be supplemented, depending on the threat, with individuals and organisations whose assets should be frozen. As far as Dutch opinion is concerned, this Regulation to counter financing international terrorism is an essential instrument for implementing a significant part of the financial measures given in the UN Safety Resolution 1373. This regulation also enables the EU independently, thus autonomously of the UN, to formulate sanctions. The European parliament already made positive recommendations on the draft regulation on 4 October through an accelerated procedure.

3.3.2. National

Shortly after the attacks, the Netherlands Central Bank (DNB) drew up a consolidated list of around 500 names on the basis of existing lists (of the UN, Bush and the FBI) and acquired through national intelligence. The DNB

distributed this listed via a circular to all institutions it supervises (banks and investment institutions) and company service providers. The Pension and Insurance Supervisor (Pensioen- en Verzekeringskamer or PVK) and the Securities Board of the Netherlands (Stichting Toezicht Effectenverkeer or STE) took similar measures. Financial institutions were asked to check whether the individuals and organisations on the consolidated list are featured in the administration in any way and to block any reimbursements and other financial means. The other lists published during October and November 2001 were also brought to the attention of the financial institutions by the DNB, PVK and STE.

In as much as financial means were found that belong to individuals or organisations on the UN Bush and Treasury list, they can be frozen immediately on the basis of the currently valid EU regulations mentioned above. However, assets for the Bush and Treasury list were only frozen recently on the grounds of the Dutch Ministerial Sanctions Rule on the Taliban of Afghanistan 2001 II dated 8 October 2001 (with Bush list), last altered on 12 October (with the Treasury list). For the list of 62 Taliban-related persons and organisations a ministerial sanction rule is still in force at present (the Afghanistan Taliban Sanction Rule III of 8 November). With these national rules, the Netherlands anticipated international decisions made by the UN and EU. The reason for this is two-fold. Firstly, there is always an amount of time between the publishing of a new list and addition of pertinent names to the UN Taliban Sanction Committee's black list. Secondly, there is a similar delay between when the Sanction Committee adopts the new list and when the EU includes the added names in an regulation.

After the Bush list and Treasury list were taken on consecutively by the UN Sanctions Committee and the EU, there was no longer any need for national legislation and the Netherlands withdrew its Taliban of Afghanistan Sanction Rule 2001 II on 25 October.

If monies belonging to persons or organisations on the confidential FBI list are found, on the basis of a request for legal assistance that meets the requirements of the Dutch criminal system, the Public Prosecutions Department can confiscate the funds.

The list of 22 organisations dated 2 November essentially differs from former US lists for two reasons. Firstly, the organisations do not appear to be directly linked to the Al Qaida/Taliban-network. The organisations are based in Europe, the Middle East, South America and Asia and include the PKK, MKO, Hezbollah, Hamas, ETA and Real IRA. Freezing the assets of a number of these organisations is politically more sensitive than earlier decisions to freeze assets (belonging to Bin Laden, Al Qaida, Islamic Jihad and so on). Secondly, the list of 22 can not, given its composition, be added to the black list that accompanies the UN Security Council Resolution 1333 by the UN Taliban Sanctions Committee.

It looks as though many of the organisations have no ties to the Taliban/Bin Laden. For this reason the Netherlands cannot – as happened earlier with US lists – issue a Ministerial Rule; in these rules, the Netherlands anticipated adding the names/organisations to the UN black list.

In accordance with the approach indicated by the FBI list, this list of 22 will be presented to the institutions by the financial supervisors with the request of checking to see whether the organisations on the list feature in the administration in any way. If monies belonging to these organisations are detected, follow-up action will be decided in consultation with the Dutch bodies involved.

3.3.3. Future measures

To tackle terrorist financing, the Netherlands argues for a two-pronged approach: the measures that must be taken in a European context and measures that are nationally desirable.
In the context of the first track – the European one – the Netherlands pleads for realising an effective community instrument to freeze assets of terrorists and organisations with no fixed location. The Netherlands feels that the above 'Regulation to tackle international financing' is the best way of doing this. This regulation seems an appropriate and flexible instrument for implementing resolution 1373. With this, the EU is not longer

entirely depending on decisions taken by the UN Taliban Sanctions Committee for a community approach. The Netherlands supports the speedy adoption of this regulation.

The second approach – the national line – should include expanding the statutory options to set up more restrictive financial measures against individuals and organisations. This can be realised through adapting the 1977 Sanctions Act. After all, the Sanctions Act came into being at a time when measures against states or territories were taken and does not explicitly provide for action against persons and organisations.

In addition, it is desirable that the Sanctions Act offers better safeguards for effective supervision of compliance with financial sanctions. Supervision of compliance with the Sanctions Act (currently the responsibility of the FIOD-ECD) could be placed with the financial supervisory bodies and the FIOD-ECD, analogue to the institutional partitioning when reinforcing supervision of compliance with the Wet MOT and the WIF 1993 (see par. 2.5.).

In this context, the supervisory bodies should, among other things, be authorised to request information and to set requirements governing the administrative organisation of institutions. Institutions should also be required by law to report. A bill to this effect will be submitted as soon as possible.

3.4. Expanding the duty to identify clients and to disclose information

Since 1991, the anti-money laundering directive has been in force in the European Union.[26] Partly on the basis of this, a central Office for the Disclosure of Unusual Transactions (also referred to as the MOT) has been set up to which suspicious or unusual transactions should be reported, and that requires companies performing financial services to identify their clients. This directive has recently been revised, among other things by expanding the offence of money laundering to include non-drug related offences such as the activities of criminal organisations, and all offences to which a lengthy prison sentence applies, and serious instances of fraud.

The revised directive also includes, as mentioned, an expansion of the duty to report, to include independent professionals such as accountants, notaries, lawyers , real-estate agents and tax consultants as well as dealers in high value goods.

At national level, the Wet MOT and the WIF are to important anchors in combating money laundering and terrorist financing. Based on these laws, financial service providers should identify their clients and disclose unusual transactions to the MOT. At present, the activities that should be reported including banking activities, concluding life insurance contracts, money exchanges, money transfers, securities transactions, transactions carried out at casinos and credit card transactions. The bill on dealers in high value goods expands the scope of the Wet MOT and the WIF to include in general non-financial services, so that independent professionals and dealers in high value goods are placed under the Wet MOT.

In MOT Monitoring Committee headed by a Procurator General, the parties concerned meet for periodic consultations. This committee aims to guide and advise the Office for the Disclosure of Unusual Transactions and to make expertise and know-how available. In this paragraph, the current expansion of the scope of the Wet MOT and WIF will be discussed, together with a series of policy initiatives to increase the efficacy of this range of tools.

[26] The directive to prevent using the financial system for money laundering, 10 June 1991, 91/308/EC, OJ EU 1991, L 166/77.

3.4.1.Expanding the duty to identify clients (WIF 1993) and to disclose information (Wet MOT)
Expanding the duty of the independent professions and company service providers to identify clients and disclose information

The EcoFin Council /JHA Council of 16 October 2001 has adopted the amendment of the EU money laundering directive. The directive proposal provides for expanding the effect of the directive on money laundering dated 10 June 1991 on the following points: (i) the definition of money laundering is expanded to include more than the current drug-related crimes; (ii) independent professionals such as real estate agents, tax consultants, lawyers , notaries, accountants and dealers in high value goods are covered by the directive.

The Lower House is currently considering a bill to amend the WIF 1993 and the Wet MOT on dealers in high value goods (ships, vehicles, art, antiques, precious gems, precious metals, jewellery and gems).[27]

This bill enables using an Order in Council to indicate other services for the WIF 1993 and the Wet MOT. The duty to identify and to disclose for lawyers, notaries, accountants, tax consultants and real estate agents can rapidly take effect through an Order in Council when the above-mentioned bill is adopted. Through this Order in Council, whereby legal and tax advice given by the stated professions is placed under the disclosure obligation of the Wet MOT, company service providers are also covered by the duty to identify and to disclose [see above comment on the duty of company service providers to disclose].

In addition, the above-mentioned bill enables supervisory bodies to designate dealers in high value goods, and certain professionals, in compliance with company service providers' duty to identify and disclose.

Disclosure by customs of the suspect conveyance of money and similar items

A field that required more attention recently involves money laundering activities through the cross-border transportation of money and similar items between countries, and the transportation of money and similar items within a country. Due to this, the FATF and the World Customs Organisation asked their members to focus on this class of money laundering activities. This topic has also been placed on the agenda of the European Union.

In the Netherlands, the customs authorities are obliged to report large amounts of money discovered during standard checks, so that Dutch taxes can be levied. This duty to disclose is limited to those cases in which a duty to pay Dutch taxes is assumed. Such instances will often involve a Dutch citizen. At the end of 2000, the Dutch tax authorities/customs (hereafter referred to as customs) was given the option of reporting disclosures to the Office for the Disclosure of Unusual Transactions (Wet MOT) as well (hereafter referred to as the office).

Suspicious shipments of money are also immediately referred to the Bureau providing police support to the National Public Prosecutor for the Wet MOT so that, if required, money or monetary instruments can be confiscated and other investigative action can be taken.

To ensure that customs can report the unusual transportation of money and similar to the Office for Disclosure of Unusual Transactions based on specific indicators, a bill has been submitted to the Council of State for advice. The current options for customs are too limited. The bill provides a grounds for disclosure by customs of unusual cross-border shipments of money and monetary instruments

[27] Parliamentary Documents II, 2001-2002, 28 018

between the Netherlands and other countries and the transportation of money and similar items within the Netherlands. The bill proposes that individuals and entities who transport money and the like should be subject to a duty to identify their clients and to co-operate so that customs can determine the identity and other matters required for reporting the unusual transportation of money and similar items. For this authority, a statutory rule is required. The bill referred to realises a disclosure rule for customs as monitoring service without the afore-mentioned restrictions that apply in the system described in the introduction.

Co-operation with the Dutch tax authorities – MOT/BLOM
In addition, work must be done to investigate whether the co-operation between the tax authorities and the MOT and BLOM can be reinforced to realise a more structural information exchange (as in Australia) and to consider whether a duty to disclose could have practical use for other sections of the tax authorities in the context of the MOT. Here, the following can be noted.

The behaviour of criminals in the placement and layering phase of money laundering and in tax offences demonstrates considerable parallels in practice. Those intending to commit tax offences are just as inclined to kick over their traces as criminals in the placement and layering phase of money laundering. He or she attempts to accomplish this by not leaving a paper trail, thus using cash money or bearer instruments, opaque constructions and off shore constructions without the supervision of financial institutions, banking secrecy and other elements that impede the efficient working of the financial system. Against this background, increasingly far-reaching co-operation is manifest between tax authorities and bodies involved in fighting money laundering. This trend can also be seen in the Netherlands. For instance in the co-operation between the MOT and the tax authorities via the secondment of one of the FIOD-ECD staff to the MOT, the setting up of the money laundering knowledge centre at the FIOD-ECD at the end of 2000 and the afore-mentioned bill on the disclosure by customs of the suspicious transportation of money and monetary instruments.

Pension funds and non-life insurers and the duty to disclose
At present, pension funds and non-life insurers are not obligated to disclose suspicious transactions. Such a duty is known to exist in some other countries. The MOT monitoring committee shall, in consultation with the parties involved assess whether pension funds and non-life insurers in the Netherlands are vulnerable (and if so in what way) to being used for money laundering and terrorist financing. If necessary these bodies will be subject to a duty to disclose unusual transactions and specific indicators will be developed for reporting such transactions.

In this context it is also desirable for the MOT monitoring committee to assess the origin of the low number of reports of unusual transactions by life insurance companies, and to advise on action to be taken in this regard. During the second mutual evaluation of the Netherlands by the FATF in 1998, the FATF was critical of the low number of reports from life insurers; the situation has not altered since then. As is known, money laundering is currently already a grounds for duty to disclose unusual transactions on the ground of the Wet MOT, in line with the recommendations of the FATF and the EU directive.

3.4.2 Amending the WIF 1993
The WIF 1993 obliges the financial institutions indicated in the act the obligation to identify their clients when providing the financial services specified in the act. This identification is done with a view to reporting any unusual transactions on the basis of the Wet MOT. A number of relevant amendments are given below.

Grandfathering
At present, a proposal to alter the WIF 1993 is pending with the Council of State, to tighten up the identification system. The bill reverses grandfathering. In the context of the WIF 1993, grandfathering means that, when contracting a financial service, the financial institution can deduce the mandatory identification from the data recorded earlier when previous services were provided. These data should stem in principle from a period after 18 January 1989 given that from that date, the requirements binding the identification conform to the current statutory criteria. At present, a formulation has been added to the act specifying that if the financial service provided earlier involved opening an account on which a balance of securities, precious metals or other items of value can be deposited, data from before 18 January 1989 may also be used.

This was added at the time (by an amendment) so as not to burden existing account holders unnecessarily. However, this means of identification involves the risk of using data that are not (completely) accurate. To cover this risk, it was decided to drop the option from the act of using data recorded prior to 18 January 1989. Using these data is still possible if it is established that the information registered then was done in a way that tallies with the current rules on determining identity.

This applies both to identification where the client was present, and to deduced identification where identification takes place through the first payment relating to the financial service provided to the beneficiary or charged from a client's current account (the 'contra account').

Money transfers and the WIF 1993.
The Decree of 22 April 1998 places money transfers under the Wet MOT. They are designated financial services as specified in article 1, (a) of the Wet MOT. At present, it can be demonstrated that, because a money transfer has been placed under the scope of the Wet MOT, identification should be based on article 2, WIF 1993. This logic is not exhaustive because money transfers are not referred to as financial services in the sense of the WIF 1993. Consequently, the money transfers will be specifically placed under the WIF 1993.

The current orders in council based on the Wet MOT and the WIF 1993 will therefore be integrated in a single coherent decree. This decree will regulate the duty to identify with regard to money transfers in the sense that money transfers are referred to as a 'service subject to the WIF' (see also par. 2.4.). 2.4).

Identification criteria in the perspective of the incidents in the US
The current Dutch anti-money laundering legislation is partly based on the recommendations made in the context of the FATF. In the European anti-money laundering directive, explicit reference is made to the recommendations of the FATF.

All members of the FATF and the members of the EEA have, in principle, the same quality criteria applying to legislation in the field of anti-money laundering. For these reasons, there are more relaxed rules in the field of identification in these countries for financial services provided in the Netherlands. The underlying thought here is that 'in their own country' clients are already sufficiently identified. These rules relate to the situation that a bank from one of the specified countries can act as representative for its client in a 'deduced identification'. The latter is only possible if the 'contra account' is opened with a bank in one of the EEA countries or in one of the states designated equal by the Minister of Finance.

The countries specified by the Netherlands also include the countries of the Gulf co-operation: Oman, Bahrain, Kuwait, Saudi Arabia and the United Arab Emirates. At present, research is being carried out to see whether there are reasons for removing these countries form the list. Such reasons could involve the fact that the legislation of these countries is not fully in line with the criteria of the FATF, with which terrorists could carry out financial transactions in the Netherlands under a false name.

3.5. Bearer securities

In fighting money laundering, the FATF has pointed out that bearer securities can be open to abuse. This relates to the possibility of remaining anonymous as the bearer of such securities. A recent OECD report i.a. on the misuse of corporate entities for illegal ends also gives attention to this point.

Like many other countries, the Netherlands provides for an option for issuing bearer securities (for companies limited by shares). The recommendations of the FATF and the OECD prompted setting up a working group to examine bearer securities. As explained in the letter to the Lower House of 14 June 2001[28], bearer securities were examined from a number of perspectives. The working group is charged with making recommendations directed at realising sufficient transparency regarding the identity of bearers of securities. Measures regarding bearer securities should also fit wherever possible in the striving towards dematerialization: documentation-free securities traffic.

Finally, they should contribute towards effective and efficient communication between the company and its shareholders and between the shareholders. Fighting terrorism underlines the need for effective measures to combat the risk of money laundering and other forms of using-using bearer securities. There, eliminating the anonymity of holders of these instruments has priority.

The measures shall, from this perspective, need to be in line with the situation in which bearer securities circulate outside the financial sector in physical form. Efficient forms of identification and registration must be found. The working group referred to earlier shall present detailed recommendations before the end of the year, including recommendations regarding the necessary legislation.

3.6. The penalisation of money laundering

To enhance the criminal prosecution of money laundering, in 1999 the Minister of Justice submitted a bill that, among other things, aims to make money laundering a separate punishable offence. At present, money laundering is punishable through the stipulation on handling stolen goods contained in the Dutch Criminal Code. The advantage of separate penalisation is that an individual/entity suspected of money laundering can also be prosecuted if he/it is suspected of committing the underlying crime or has already been sentenced (the 'fence-thief rule' thus no longer applies). This separate penalisation will facilitate international co-operation in particular. This bill is now with the Upper House for consideration.[29] paragraph 3.2.2 already outlined that the Ministry of Justice is elaborating a separate penalisation for terrorist crimes and for taking part in a terrorist organisation.

Regarding the powers of Europol on money laundering, the following is observed. In the JHA Council of September 2001, political consensus was reached on expanding the Europol mandate in the fight against serious international crime as laid down in annex II of the Europol Convention. This expansion also includes money laundering in as much as this relates to the attention points given in annex II. In the same council, political consensus was reached on a number of proposals to amend the Europol Convention. One of these amendments involves expanding Europol's powers to include money laundering without a relation to an underlying offence. Amending this convention depends on a ratification procedure. Prime responsibility for this lies with the Ministry of Justice.

3.7. The misuse of corporate entities

One theme that has gained increasing attention over the last few years is the misuse of corporate entities for all manner of illegal activities. With globalisation, corporations are increasingly falling prey to misuse to launder money, terrorist activities, fraud, illegal tax practices and corruption.

---

[28] Parliamentary documents II 2000-2001, 17 050, no. 218

[29] parliamentary documents 27 159

In May this year, the OECD published a report with the goal of gaining insight into the way in which corporations are abused for illegal practices, and providing options for countering these practices. The FATF uses this report as a key element to arrive at tightening up its recommendations to fight money laundering and terrorist financing (see par. 3.2.). The European Union is also investigating the issue of these kinds of use-use.

In this regard, an Italian university was recently requested by the European Commission to publish a report. The report basically parallels the findings of the report of the OECD. In the Netherlands, this material is used pro-actively in fighting money laundering and terrorism. Please see paragraph 2.3 of this document on introducing supervision of company service providers in the Netherlands and paragraph 3.5 which deals with the vulnerability of bearer securities.

With regard to other elements of this problem, headed by the Ministry of Justice, a bill is being prepared to properly address any vulnerabilities. Given the commonalties of this bill with fighting money laundering and terrorist financing, it is obvious that the bill should hold account with the revision of the FATF recommendations on this point and involve, among others, the financial supervisory bodies, the FIOD-ECD and the Public Prosecutions Department in realising this bill.

3.8. Central Account Register

In the agreement of 2000 on mutual legal assistance in criminal cases, concluded between the member states of the EU, a protocol was recently set up. This protocol provides for such things as an obligation for member states to provide a list of bank accounts based on the data of suspect individual or (legal) entities and to provide details on transactions on bank accounts. This means that mutual legal assistance entails a duty to provide lists of bank accounts of suspect individuals/bodies in investigations, at the request of another member state. The protocol does not oblige the settling up of a Central Account Register.

In the Netherlands, there is no system where all bank accounts are registered centrally. Interpay is familiar with all bank account numbers (with the exception of Postbank accounts) but that system cannot be searched by name. The details of account holders are generally registered centrally with a financial body. To gain a complete picture of the accounts someone keeps, the Public Prosecutions Department will have to consult about 130 banks in a request for legal assistance. However, because it is important to have information that includes the name of the account holder in a criminal investigation, whether and how a central account register can be set up will need to be assessed.

Such a register will not only be open to perusal during requests for legal assistance (which the protocol proposes) but will of course be open to use by Dutch investigative bodies. By setting up a central account register, banks will be less involved with answering general questions from investigative bodies about whether or not the subjects of their investigations keep bank accounts with a banking institution. If an account number and a bank are identified in the system, specific questions can be asked that will be of greater value to the investigation.

In fighting crime, it is currently possible for the Public Prosecutions Department/police to ask the banks for concrete information. However, this entails requesting highly specific information (for instance a 'name') always on the basis of an account number. In a central account register, the Public Prosecutions Department/police can commence a financial investigation faster and better or proceed with an investigation. Now, financial information can only be asked of a financial institution if a bank account number is known in an investigation. A central account register enables an investigative team to check the register at the start of a financial investigation, and discover where a suspect holds accounts, subsequently enabling the team to ask the bank for pertinent information.

A central account register will complement the proposed new MOT indicator with names of terrorist subjects if, after research, the decision to implement it is taken. On the one hand, the MOT indicator with terrorist subjects

that will be applicable for the banks regarding transactions carried out by subjects on the list, will also apply to transactions involving these subjects in which they are not account holders (such as money exchange transactions). On the other hand, a central account register does not only apply to terrorists but can be used for any investigative purpose and will, in due course, have structural added value. The register could therefore have a clearly added value in tackling crime in general and in the fight against money laundering and terrorist financing.

To arrive at a central account register, the legal situation must be assessed. At present, providing information on bank accounts on the grounds of the Code of Criminal Procedure and an instruction from the board of procurators general is only possible if the request is concrete with regard to the person and financial data requested. Between banks and the board of procurators general it has been agreed that no information needs to be provided in response to a request containing only a name. The Ministry of Justice is now working on a bill to amend the Code of Criminal Procedure to implement the previously mentioned protocol (partly based on the report of the Mevis Committee). This amendment gives the Public Prosecutions Department/police more scope for requesting automated data. If, after research, it is decided to introduce a central account register, it is possible that statutory stipulations will need to be adapted to the requirements demanded by the Data Protection Act (Wet Bescherming Persoonsgegevens). The latter is however dependent on the scope of the central account register to be set up.

By way of conclusion, it seems valuable in the short term to investigate the pros and cons of instituting a central account register. Although setting up such a system involves adapting legislation to some extent, and cannot be done without budgetary consequences, the end result could be advantageous.

4. Enforcement, implementation and information exchange

4.1. Introduction

The legislation of the previous chapters will need to be enforced and implemented effectively if they are to contribute to fighting terrorism. In addition, an effective approach requires the parties involved to have sufficient opportunities to share information. This chapter focuses on these two lines. First, it deals with an analysis of the enforcement chain and the scope that exists for further improvements (par. 4.2 – 4.5). This is followed by discussing the potential for further improvements to information exchange (par. 4.6 – 4.8). In all cases, the accent lies on the enforcement chain. In the context of fighting terrorism this is after all considered the most obvious channel. This paragraph is also based on an analysis by the Ministry of Finance made in the summer of 2001, that (therefore) has a broader scope than simply fighting terrorism.

In this policy paper, enforcement is understood to mean action intended to put legislation into effect. This contains both supervision – the first step in enforcement and – further on in the chain, the response to a breach by means of reparative or punitive measures.

The following play an executive role in the enforcement chain: the supervisory bodies (DNB, PVK, STE and to some extent the FIOD-ECD), the MOT, the investigative bodies (the police, the BLOM, FIOD/FIOD-ECD) and the prosecution (Public Prosecutions Department). The legislature and the judiciary (judicial power) also play a role. Below, we specifically focus on the tasks and powers of the executive actors in question and the way in which these powers are implemented. Next, a brief survey is given of existing collaborations. Given the specific nature of the investigation and prosecution under anti-money laundering legislation, this part of the enforcement chain is contained in the thematic paragraph 4.7.

Finally it is important to understand that the contribution of the police and the Public Prosecutions Department is broader than described in this chapter. In this paper, that essentially attempts to cover chapter 5 of the terrorist measures action plan, the emphasis is the enforcement chain in the financial sector and the elements and actors contained therein. In addition, chapter 4 of the action plan against terrorism of the cabinet places the role of the police and Public Prosecutions Department in a broader perspective.

4.2. Financial supervisory bodies

The Minister can not give the supervisory bodies special instructions on the grounds of his position. In general, this means that issuing instructions on how to act in an individual case is ruled out. The DNB, STE, and PVK are charged with supervising compliance with acts in the field of financial markets. The legislation in which their tasks are allocated is largely aimed at protecting account holders, insured parties and investors and keeping intact the healthy, efficient operation of the financial sector. This means that the supervisory bodies are authorised to monitor financial institutions with no apparent breach of a legal proscription being in evidence.

This form of supervision is referred to as supervising enforcement and should be separate from investigation. Exercising supervision will generally comprise actual transactions but could also involve written legal acts (claiming information or inspection of business data or documents).

A detected violation can prompt the imposition of a sanction although this does not always have to be the case. Such a conclusion can also lead to intensive consultations with the parties involved to decide on the measures to be taken and to ensure that the involved party meets the requirements.

Another type of supervisory task charged to the DNB, PVK and STE concerns the issuing of licenses and the power to formulate further rules to implement an act.

Powers of supervisory bodies

The supervisory bodies have, in brief, the following types of powers: powers in the context of supervising enforcement, imposing sanctions, issuing and withdrawing licenses, granting dismissals, formulating legal rules and issuing guidelines and general recommendations and intervention powers such as the power to designate and submit suspicions. In general, the supervisory bodies concerned have the same powers.

The starting point of the law enforcement policy is that primacy for enforcement is with the administration. This means that where the DNB, PVK and STE are responsible for implementing and ensuring compliance with specific rules, and thereby identify breaches, the supervisory body is also charged with taking action against such cases, using reparative and, if necessary, punitive sanctions.[27] Criminal law plays a role in conjunction with and supplementary to other instruments: it should only be called upon when administrative law enforcement instruments are inadequate or when the breach is so serious that the serious tool of criminal law must be resorted to. Based on the primacy of administrative enforcement, the administrative law enforcement of financial supervisory legislation will be strengthened (introduction of penalties and fines, IDBB). In the evaluation of the IDBB in 2003, attention will also be given to seeing whether the deployment of administrative enforcement instruments is optimal and is used correctly. In the context of this paper, the accent lies on the criminal law enforcement chain.

Attention points

In the current constellation, three points are specifically noted.

Although it can be said that enforcement awareness has definitely increased over the last few years, the way in which powers are exercised differed per supervisory body. One supervisory body is less inclined to reach for the administration arsenal of sanctions and expects more from an intense meeting with the institution under supervision. Another supervisory body is more inclined to impose reparative sanctions while yet another places great emphasis on the enforcement priority within a certain period (comparable to the more intensive attention for certain areas announced in advance by the tax administration). Further uniformity of the treatment of bodies under supervision looks likely, whereby unjustified or differences that are solely historical should vanish in the interests of transparency and legal equality.

In second place, the capacity input of the supervisory bodies is sufficient although in some cases it is impossible to indicate the number of cases dealt with administratively or criminally, the phase in which they are at present and the possible criminal outcome.

This places pressure on a balanced and uniform repressive enforcement. It also causes problems for a systematic feedback on enforcement issues and jurisprudence into policy and legislation. Therefore in this context there is a need to streamline existing co-operative agreements in the enforcement chain, with adequate attention for transparency and accountability for all parties.

Thirdly, when exercising supervision, the supervisory bodies traditionally focus on institutions that have placed themselves under the supervision of the body in question. A field that is under development, but currently covered less systematically at present, are the individuals or institutions that exercise activities covered by supervisory legislation, but that do not seek the consent of the supervisory bodies, either consciously or unconsciously. This part of 'the market' is currently covered incidentally, for instance by Internet sweeps, by following up complaints, through advertisements and so on. From the perspective of fighting terrorism, it is also important that this 'intelligence' function is better embedded in the working methods of financial supervisory bodies than it has been in the past.

The Ministry of Finance shall place all three themes on the agenda in the standard consultation with the financial supervisory bodies; connection points for a more equal-oriented approach can be found in the legislation that correlates with the bill to provide stipulations for the introduction of a non-sector specific supervisory dimension in the various financial supervisory laws.[26]

4.3 Reinforcing the FIOD-ECD financial investigations

Definitions of terms
Before detailing concrete steps in the direction of reinforcing and concentrating financial investigation, there first follows an exploration of the substance of the terms financial-economic crime and financial investigation as a tool in tackling it. Both concepts will first be delineated. Based on this, working from existing situations and the current status, a context is outlined for initiatives that have been taken and that have been planned.

Financial investigation
Financial investigation can be defined as a form of investigation where financial expertise is used to enforce the law. In tactical investigations, financial investigation contributes to:
- Gathering evidence
- Determining the scale and deprivation of illegal gains
- Investigating assets and/or criminal organisations

Financial investigation will be a particularly key instrument in tacking financial-economic crime. Over the last few years a great deal has been invested in familiarising investigative authorities with financial investigation and integrating it as a tool in investigative activities.

Various levels of expertise exist within the field of financial investigation (from basic to academic level). These various levels are present within both the police and special investigative services (including the FIOD-ECD). The starting point is that every investigative officer should at least be trained to basic level. At regional level, the regional forces have entered into collaborations to tackle relatively serious and serious fraud offences. These teams (inter-regional fraud teams) work under the immediate direction of the Public Prosecutions Department and each have been allocated a separate action area in which they are developing

[26] This bill was adopted by the Lower House and is currently with the Upper House (Parliamentary Documents 1, 2000-2001, 27290, no. 399)

national expertise (insurance fraud, bankruptcy fraud and so on). The core teams charged with tackling organised crime, are equipped with high quality expertise in the field of financial investigation. The top layer can be deemed the knowledge and expertise present in both the regional crime squads of the National Police Services (KLPD) and the special investigative services. The KLPD has such expertise because of its involvement in money laundering and fighting international fraud. The special investigative services have a long tradition in applying financial investigation methods. The specific duty areas assigned to these services demand a high level of knowledge and expertise in the field of finance.

The FIOD-ECD is responsible for investigating and prosecuting tax and customs fraud. Traditionally, part of the capacity of the FIOD-ECD was intended to contribute to enforcing the quality of society in a broad sense. This is why it co-operates on tackling community and organised crime. Expertise in the field of financial investigation and information in this field is provided by the tax administration. In the enforcement arrangement with the Public Prosecutions Department, agreements are made on the way in which these places are filled. Concrete decisions on input are taken in the Central Tripartite Consultation (or CTPO), comprising the tax administration, FIOD-ECD and the Public Prosecutions Department. In this context capacity is mobilised for the KLPD, the Core Teams and the Synthetic Drugs Unit (consisting of the police, tax administration, FIOD-ECD and the Public Prosecutions Department).

Efficient input of high quality know-how of financial investigation
As outlined in the previous paragraph, it should be realised that all investigate services, including the police, require a degree of expertise in this field. This should be borne in mind with regard to the aim of reinforcing and concentrating expertise in the area of financial investigation. In the context of fighting terrorism, activities relating to financial matters solely require quality expertise in the field. This type of expertise is principally concentrated in the FIOD-ECD and KLPD. These organisations take the lead in fighting terrorism in matters relating to finance.

Consideration should also be given to the fact that thorough knowledge of financial investigation is also required to fight organised crime. Such expertise is mainly found among the core teams and the KLPD in particular. Where the FIOD-ECD encounter serious basic offences committed by criminals, financial investigations bring the police into contact with the same criminals as those involved in organised crime. Financial investigation can provide the link between criminal behaviour and how it is financed. This is why it is crucial to forge this link. The efficacy of applying this instrument for counter-terrorist activities is enhanced through exchanging data, analysing them and through intensive reciprocal co-operation. The watering down of scarce expertise in this field must be countered and prevented.

Co-operation between the FIOD-ECD and KLPD
The events of 11 September 2001 prompted the FIOD-ECD and KLPD to consider the extent to which both investigative services can jointly stimulate combating crime, including terrorism. In concrete terms, this led to the following agreements:

- joint criminal law investigations
  The KLPD is the co-ordination point in the Netherlands for terrorist-based requests for legal assistance and criminal investigations into terrorism and political activism in additional to crime fighting from a financial-economic perspective. The FIOD-ECD is responsible for duties in the field of physical goods and financial integrity. In both areas, the enforcement efforts will be stepped up. In the field of financial integrity, there will be close collaboration with a supervisory body. Co-operation can be desired if there is a need for specific expertise, with respect to information position and to acquisition and technical investigative areas. The FIOD-ECD and KLPD have since decided to form a taskforce to carry out joint investigations into credit balances, cash flows and so forth that are related to terrorism. This co-operation has initially been entered into for one year and will comprise of 15 to 20 full time posts. These investigations will entail a clustering of financial and criminal information on the one hand and financial expertise and investigative know-how on the

other. In this regard, we also refer to the "Hit and Run Money Laundering-Tactic" (HARM), that has been in operation since 1999. A HARM investigation is started when there is information on suspect financial transactions or suspect possession of assets. These investigations are aimed at the arrest those immediately involved and confiscation of suspect money.

The HARM does not suffice for tackling suspicious financial transactions taking place in a more complex environment and more intensive investigation is required. This is why the KLPD and FIOD-ECD will combine financial and criminal information and financial expertise in a joint project preparation aimed at more far-reaching follow-up investigation. In the meantime it has been agreed to split up HARM investigations more than was usually the case in order to gain (more) insight into the individuals and entities that play a background role and that could be involved in terrorist activities. The HARM provision, which ends in December 2003, is intended to be continued on a structural basis given the success in terms of sentences and confiscations. The KLPD and the FIOD-ECD will merge their expertise where more in-depth follow-up investigations are required.

- Reinforcing mutual information positions
  Where possible, the KLPD and the FIOD-ECD will share relevant available information. The KLPD has a wealth of offender-centred information while the FIOD-ECD can add information of a financial-economic nature. It is expected that clustering this data and using each other's expertise in enriching it will lead to sound analyses on the basis of which there will be more chance of gaining insight into cash flows related to terrorism. Studying and enriching such types of information can offer connection points for subject-centred investigations and provide input for the afore-mentioned taskforce.
- Co-ordinating activities
  To harmonise the activities of both organisations better, the FIOD-ECD will station two liaison officers with the KLPD. One is added to the co-ordinating centre of the KLPD in Driebergen, the other will be stationed with the MOT/BLOM.
  Driebergen is the co-ordination centre for all regional forces and is also the address for legal assistance requests regarding terrorism received from overseas By placing a liaison officer in Driebergen, the FIOD-ECD is more likely to be able to send information directly. Moreover, it allows a rapid assessment of, and the extent to which, a multi-disciplinary investigation (FIOD-ECD and KLPD) is justified in the light of requests for legal assistance received.

Financial-economic crime

The cabinet policy paper on combating fraud and fighting financial-economic crime (1998-2002 understands financial-economic crime as all types of fraud in the area of tax, social insurance, subsidies, regulation legislation of ministerial departments and what is referred to as 'horizontal fraud' (fraud which affects companies and consumers in the first instance, not the state, by means of forgeries, assurance fraud, credit card fraud and so on).

Money laundering is also part of financial-economic crime. Money laundering is hiding or concealing the real nature, origins, place of finding, alienation or transfer of money or items or ownership thereof, while people realise that crime is involved. Money laundering practices are often the consequence of underlying criminal practices. These practices include (mainly) drug trafficking, trafficking in human beings, trafficking in arms and terrorism, along with the afore-mentioned fraud.

Financial-economic crime generally occurs in all areas of social intercourse as indicated above. Fighting it is thus a task for all police and investigative services. Combating terrorism-related financial-economic crime is largely charged to the KLPD and FIOD-ECD, given their specialist knowledge and, as far as the FIOD-ECD is concerned, specific responsibilities for investigating offences in the field of financial supervisory legislation among others. An outline of the tasks of the FIOD-ECD follows below by way of clarification.

Tasks of the FIOD-ECD
Investigating tax and customs fraud forms the principal task of the FIOD-ECD. With this, the FIOD-ECD contributes to the integral client processing of the tax administration. In implementing this task, the FIOD-ECD is under the aegis of the Public Prosecutions Department. This investigative task is laid down annually in an enforcement arrangement between the tax administration and the Public Prosecutions Department.

Customs carries out a number of non-tax-related supervisory duties. They include such matters as narcotics, weapons, animal species facing extinction, environmentally hazardous substances and so on. The FIOD-ECD also carries out investigations regarding these non-tax-related supervisory duties, taking on those investigative elements involving NFD fraud and tax fraud.

If customs come across narcotics, the FIOD-ECD will take responsibility for dealing with the find except when these narcotics have been searched for (and found) at the request of the police in a current police investigation. Covenants with other agencies are concluded for investigations into narcotics

The most important task of the FIOD-ECD in the context of financial-economic crime within the ECD area is to supervise compliance with and the investigation of violations of the Sanctions Act and the Import and Export Act and the investigation of breaches of financial supervisory legislation and the anti-money laundering legislation (Wet MOT and WIF). Supervision of compliance with financial supervision is the responsibility of the DNB, STE and PVK. As regards the Credit System Supervision Act (Wet Toezicht Kredietwezen), the Securities Transactions Supervision Act (Wet toezicht effectenverkeer), the Investment Institutions Supervision Act (Wet toezicht beleggingsinstellingen), the Insurance Industry Supervision Act (Wet toezicht verzekeringsbedrijf), the funeral in-kind insurers supervision Act (wet toezicht natura-uitvaartverzekeraars) and the Foreign Exchange Office Act (Wet inzake de wisselkantoren) the principal task of the FIOD-ECD is to investigate companies operating without registration or license, and book them. Investigating the offence of insider dealing in securities transactions is also one of the FIOD-ECD's investigative tasks. The sole fact that a company pulls back from the supervision of the financial supervisory body does not mean that the company is involved in criminal activities. If there are indications that this is the case, the criminal investigation will be expanded. In such a situation, money laundering could also be involved.

With regard to the anti-money laundering legislation (Wet MOT and WIF 1993 financial services), the FIOD-ECD is charged with investigating breaches of the laws. As remarked above, supervision of compliance of the Import and Export Act and the Sanctions Act is also partly charged to the FIOD-ECD. Primarily, the supervision is geared to assessing whether actions are conducted in conflict with the sanction stipulations or whether exports have been made without a license. If that is found to be the case, criminal action will be taken and terrorist activities surrounding the illegal practices may manifest themselves.

Initiatives for reinforcement
In the context of the further reinforcement of the investigative tasks of the FIOD-ECD in the area of financial-economic crime (including fighting terrorism), three action points are currently being pursued:
1. Completion of the integration of the FIOD-ECD organisation;
2. Intensification of the enforcement;
3. Approaching money laundering

Ad 1. FIOD-ECD - a special investigative service
The fusion of the FIOD and ECD into a single special investigative service, the FIOD-ECD, is more or less complete. In the Cabinet standpoint on special investigative services (TK 1999/2000, 26955, 1) and in anticipation of legislation on the matter, the investigative tasks will be placed with investigative teams and the supervision tasks to supervisory teams. Management, policy, planning and control will be located within one organisation. In policy, design and implementation, the infrastructure developed

by the tax administration on enforcement will be used in general to reinforce enforcement within the FIOD-ECD (including recruitment and selection, training, knowledge, risk analysis, automation).

Mandatory results are included in the integrated enforcement arrangement between the principal ministries, the Public Prosecutions Department, the tax administration and the FIOD-ECD, regarding the investigative tasks of the FIOD-ECD. This arrangement determines, among other things, that each year the FIOD-ECD will supply a total of 555 completed official reports to the Public Prosecutions Department: 450 for the tax and customs field and 105 for the former ECD domain. In addition, agreements have been made on the number of supervisory investigations. Law enforcement models are currently being developed for all sub-areas within the FIOD-ECD in consultation with all chain partners (ministries, the Public Prosecutions Department and other supervisory bodies). This approach to enforcement through prevention, services, supervision and investigation will lead to reinforcing enforcement. The actual implementation of supervision and investigative tasks contained in the Cabinet paper on fighting terrorism and on security involves using offices from the integrated FIOD-ECD.

In the context of completing the integration of FIOD-ECD, streamlining the internal exchange of information is currently undergoing a re-think. Here, a distinction should be made between information that originates from investigation and information that originates from supervision and the legislation applicable to both areas of duties (the General National Tax Act or Algemene wet rijksbelastingen, the Economic Offences Act or Wet op de Economische delicten, and the General Administrative Law Act or Algemene wet bestuursrecht). This will be reconsidered in its entirety, and in correlation with the comparable initiatives in the context of the Financial Expertise Centre (par. 4.6).

Ad 2. Intensifying the enforcement activities of the FIOD-ECD
Because of its geographic location, the open structure of its society and high quality financial sector, the Netherlands could be an attractive country for persons and organisations involved in (financing) terrorist activities. With this in mind, immediately after 11 September 2001 the FIOD-ECD decided to mobilise considerable extra capacity, largely structural, in fields that could be vulnerable to terrorist-related activities. In the financial area, this involves money laundering activities by terrorist and extremist organisations and related fund-raising, underground banking, cash transportation and insider dealing. In the area of items, extra efforts are invested in enforcing legislation related to strategic goods, chemicals, chemical and biological weapons and sanction measures.

This reinforced input is manifest in the following concrete activities:
- Reinforcing the criminal intelligence unit and investigative information department;
- The alertness of the central office (accessible 24 hours a day) for reports that could be related to terrorism;
- More attention for the Internet (digital investigation) in coherence with the police digital investigation plan of action;
- An extremely intensive information and monitoring programme geared to the relevant corporate sectors;
- Extra capacity for requests for mutual legal assistance and for international legal assistance.

Extra capacity is reserved for the above: see also chapter 5 on this point.

Ad 3 Tackling money laundering by the FIOD-ECD
If the FIOD-ECD is confronted with money laundering practices it will, after consultation with the national Public Prosecutor of the Ministry of Justice MOT, instigate criminal proceedings. The FIOD-ECD does this because of its task as special investigative service of the Ministry of Finance that, given the cabinet policy on financial integrity has special responsibility in this regard.

This task can be completed even more effectively once money laundering is included in the Dutch Criminal Code as a separate offence. Another important element in fighting money laundering is the Office for Disclosing Unusual Transactions. At present, suspect transactions are largely reported to

regional forces. The specialist expertise of the FIOD-ECD and its position as concentration point for specialist financial investigations however could be used to increase the benefits of the Wet MOT but also assessing the output of the MOT by the FIOD-ECD. In addition (e.g. in Australia) it has appeared that the synergy between information on suspect transactions and tax information leads to good results regarding combating money laundering constructions. In this context, the co-operation between the FIOD-ECD and the MOT/BLOM is being intensified: see also par. 4.7.

Summary of action points

Below follows a summary of the concrete action points:

- Reinforcement of the FIOD-ECD co-operation with the KLPD, geared to exchanging information, the joint carrying out of criminal investigations (including structural continuance of the HARM provision) and co-ordination of activities.
- Intensification of enforcement duties of the FIOD-ECD on financial areas and goods areas, focusing on risks relating to terrorism;
- Intensification of combating money laundering practices both with the package of duties of the FIOD-ECD (including assessing the output of the MOT by the FIOD-ECD) and in the context of the HARM investigations that will be structurally carried out.
- Further streamlining of information exchanges within the FIOD-ECD.

4.4. Public Prosecutions Department

The Public Prosecutions Department supervises investigations. This includes both providing special instructions in investigations into concrete cases and giving general instructions regarding the direction the investigation could take. The task of the Public Prosecutions Department applies to both police investigations and those carried out by special investigation services, of which the FIOD-ECD is one. With a view to improving the approach taken to financial-economic crime, the following advances are relevant.

To strengthen the efficacy of the investigation-prosecution enforcement chain in the relation with special investigation services, as of 1 April 2002, the Public Prosecutions Department will dispose over a national organisational unit that concentrates on the enforcement areas in which these special investigation services operate. On behalf of the Public Prosecutions Department, this unit will maintain relations with these special investigation services.

The chief public prosecutor who will head the unit in question (the functional Public Prosecutions Department, hereafter referred to as the FOM) will thus exercise (general) supervision over investigating the services whereby he will maintain a direct relationship with the management of the special investigation services. In that context, he will also advise the board of procurators general on the formal context that applies when dealing with offences that come to the attention of the special investigation services. In this field there are already indications – such as those relating to dealing with tax cases and social insurance cases. The starting point will be that the special investigation services will deal with one public prosecutor's office, namely the FOM. The FOM will be able to act under its own authority on a national scale; it will, if required, also be able to provide the requested assistance at case level. The FOM will also give special attention to the coherence between special investigation services and co-operation between special investigation services with the standard police force and in particular the national investigation team. A headquarters group was set up on 1 September 2001 to put the FOM into operation.

The above-mentioned new organisational facility clusters expertise in the special enforcement areas. This facilitates providing reinforced support if the Public Prosecutions Department is faced with gases calling for the expertise concerned. The specialised public prosecutors working at the FOM will thus play a leading role in dealing with complex cases. This places the quality of enforcement on a higher level. To tackle financial-economic crime, the starting point is that the personnel capacity that already existed and which was reinforced in the Integrity Policy Paper of 1997 to a total of 4 public prosecutors

and a number of support officials, will remain available in full for this policy area (as will the National Money Laundering Officer).

Anchoring this capacity and the National Money Laundering Officer in the FOM better equips the Public Prosecutions Department to actually deploy the allocated personnel capacity in these areas; in addition, greater recognition is also expected to attract more recruits which will help swell personnel ranks. Both aspects were not dealt with in the period after the Integrity Policy Paper. In total, 40 to 50 people will be working at the FOM.

When exercising authority over the investigations carried out by the special investigation services two parties play a role: the ministerial department that works from the perspective of how the investigation can serve the ministry's policy goals and, secondly, the Public Prosecutions Department that has authority over the investigation whereby the legal legitimacy of investigative actions and prioritisation of the underlying legal interests (such as the integrity of financial traffic or ecological values) will be considered.

The convergence of both perspectives outlined and the interests of all involved in an efficient enforcement chain led, and again now, to agreements on the direction in which the investigation and prosecution is going as well as on the nature and volume of cases offered to the Public Prosecutions Department.

The creation of the FOM will in this case also be used to streamline the various agreements and arrangements that already exist in the area of financial legislation. At present there are numerous consultations (including formalised agreements) between the three financial supervisory bodies, the FIOD-ECD and the Public Prosecutions Department on investigations under financial supervision legislation. The numerous consultations illustrate both the willingness to collaborate and the need to arrive at a more integrated approach. As already signalled, there is presently no reliable and uniform information on the efficacy of criminal law enforcement in the area of financial-economic crime, despite intensive forms of co-operation.

For these reasons, the Ministries of Finance and Justice, in consultation with the parties involved, will streamline the working alliances. Here, the starting point is to make optimal use of the centralisation with the FOM described above, aimed at strengthening the enforcement chain by means of mandatory results and increasing the transparency and accountability for the results achieved for all parties involved.

4.5. The judiciary

In the field of the judicial organisation, separate to the theme of combating terrorism, a number of change processes are under way that mainly relate to the organisation and financing of the judiciary. These include: the bill on the organisation and administration of law courts[30], the bill on the Judicial Council (currently being set up)[31] and the required legislative amendments[32].

In the context of this policy paper, NLG 2 million will be made structurally available for the judiciary. The criminal cases arising from the intensified measures in the context of this paper are expected to be broader than average criminal cases. These cases will generally be treated as 'mega cases'. The court in Rotterdam, following the lead of the national office of the Public Prosecutions Department, fulfils a nation-wide co-ordinating task in the field of dealing with mega cases. (The court in Rotterdam has a court specifically for dealing with such cases). In this regard, some of the financial resources (NLG 1 million on a structural basis) will be allocated to the court of Rotterdam so that the nation-wide co-ordinating task can be intensified and the capacity of the criminal sector of the court can be expanded. The remaining monies (a structural NLG 1 million) will be invested in increasing the expertise of judges and court staff in the area of financial fraud in relation to terrorist activities. Before the resources are

[30] Parliamentary documents I 2001-2002, 27 181 no. 55.

[31] Parliamentary documents I 2000-2001, 27 182, no. 324.

[32] Aanpassingswet modernisering rechterlijke organisatie, Parliamentary documents II 2001-2002, 27 878.

made available, the Judicial Council will consult with the board of procurators general in the context of harmonising the criminal law chain.

4.6. Centre to Reinforce Financial Expertise (FEC)

The FEC was set up on 31 December 1998 as a co-operation between the Public Prosecutions Department/Court of Amsterdam, the STE, the DNB, the PVK, the FIOD, the ECD, the tax administration/large corporations Amsterdam area, the Amsterdam/Amstelland Police, the KLPD/Investigation Department and the MOT[33]. The goal of the FEC is to stimulate the integrity of the financial sector. It has been designated three tasks: a) the mutual exchange of information on investigative methods, fraud profiles, trends and market developments to reinforce the execution of duties by the organisations concerned; b) to encourage better identification of possible offences that are now less distinctly identified by each separate body; c) to develop expertise to implement and support investigations.

To realise these tasks, an Information Consultation (IO) and a Selection Consultation (SO) have been introduced. The IO sets up work groups to focus on sharing information that is not related subjects. The work groups list and describe possible risks for integrity. These work groups form a key instrument in stimulating the expertise of the participants.

Taking into account the duties and legal powers of each body, in the SO subject-related information is exchanged and, with regard to concrete cases, choices are made to take measures of a criminal law nature. The secrecy stipulations in the supervisory legislation, the tax laws and legislation relating to investigation and prosecution means it is not always possible to exchange subject-related information at the disposal of the participants. In most case, subject-related information can only be exchanged if there is a reasonable suspicion of guilt of an offence in line with article 27 of the Dutch Code of Criminal Procedure.

If there are cases in which there are reasonable grounds for suspecting an offence based on article 27 of the Code of Criminal Procedure, the Public Prosecutions Department can, in opportune instances, introduce these cases at as early a stage as possible so that all parties can contribute information at that initial stage.

Over the last few years, the FEC participants investigated and developed other possibilities to arrive at a more effective co-operation. At the start of 2002, an evaluation of the activities and results of the FEC will take place.

In 2001, prior to the evaluation, the Ministries of Finance and Justice commissioned a study into obstacles to exchanging information so these impediments could be resolved. The goal is to optimise information exchange, taking account of the options offered by the relevant EU directives. The following possibilities are being explored. The 'most simple' recommendations highlighted by the study concern adjusting the secrecy stipulations of the various acts. The participants in the FEC would then be able to exchange information, each from the basis of their own organisation, without statutory secrecy restrictions.

Here, a distinction can be made between the entry points at which information can be exchanged. This enables following article 27 of the Code of Criminal Procedure mentioned earlier, but an earlier point could also be chosen, for instance the moment at which there was a concrete indication that one of the provisions sanctioned by criminal law is not being met. This solution would probably be possible based on an interpretation of article 12 of the Second Co-ordination Directive on Credit Institutions[34] which

[33] Institution Decree of 31 December 1998, Netherlands Government Gazette 1999, no. 32.

[34] 89/646/EEG, amendment of Directive 77/780/EEC, currently article 30 of Directive 2000/12/EEC

regulates the secrecy duty of the supervisory authorities. The first paragraph of this article does not permit supervisory bodies to pass on confidential information which they have learned in the course of their professional capacity to third parties in that form, notwithstanding cases covered by criminal law. What can be revised is 'whether the case is covered by criminal law" which can be interpreted to mean that it "[concerns] cases in which there is a concrete indication that one of the provisions sanctioned by criminal law is not being met."

A second possibility is to consider if a 'FEC ACT" is an option to increase the power of the FEC. More than the adjustment of the secrecy conditions above mentioned, such an act would meet the existing problems on information exchange. An act of this sort could help the FEC to become a forum within which the participants, perhaps not including all FEC participants, would be able to exchange information without conflicting with their secrecy regimes as individual institutions and of course taking into considerations the restrictions of the EU directives. The starting point for all parties should be that, in an FEC context, a jointly co-ordinated and harmonised policy would have to be reached, including assurances about whether or not the FEC would make information known. In addition, an act of this sort would enable formalising consultations between the parties concerned and co-ordinating parties' responses. This could optimise the efficacy, transparency and legal equality of dealing with cases.

In meetings held by the Minister of Finance in the context of preparing this policy paper, many of those involved, including participants in the FEC commented that in its current structure the FEC may have an added value but that in order to strengthen co-operation, information exchanges must be improved, whereby an FEC act would seem the most appropriate method. In line with the scope offered by the EU directives, setting up an act of this sort is being considered.

The FEC currently has an intermediary character. Besides a head of the FEC, there are two secretaries who co-ordinate the IO and SO. The expertise and input of information originates from the participants in the FEC. The FEC acts as a catalyst with regard to the information position of the various institutions taking part in the FEC.

To make the FEC a more dynamic expertise centre, it will be expanded to include a number of co-ordinators. The FEC will retain its intermediary character whereby the input of the separate participants will continue to remain the key factor. The FEC will serve as a platform in which collaborations can also take place on a smaller scale depending on what is being investigated.

The co-ordinators will each have their own area which will include "combating terrorism financing" to improve and expand the steering of the collaborative parties. Through risk analysis, it will be possible to ascertain ways in which terrorist cash flows can be exposed and how the financial system is used in this regard. In addition, based on subject-linked information, such as the consolidated list drawn up by the DNB, the FEC participants can combine information and list networks to combat terrorist financing more efficiently. Within this specific working arena, as already indicated in this policy paper, the Dutch National Security Service (BVD) will need to be assigned a role. The catalyst function of the FEC will be more effective with this than has been the case so far, making it possible to set up a larger number of work groups and investigations.

The role of the FEC regarding the integrity of the financial sector is directed at the situation in the Netherlands. The issue of the integrity of the financial sector is thus not limited to Amsterdam. To enhance the efficacy of the FEC in future, more support is needed and the FEC partners will also be required to provide their specific contribution from a national perspective. This could include a national profile and nation-wide cover. Because the public prosecutor's office in Amsterdam and the Amsterdam police do not have either national cover or national competency, replacing this by the KLPD and the FOM will be considered with a view to central management; this will also heighten coherence of other activities aimed to reinforcing the enforcement chain (see par. 4.4).

The modalities of the participation of the BVD will be worked out in greater detail. The fact that the BVD deals with sensitive information means that the exchange of information may not always be reciprocal, and will primarily flow from the FEC to the BVD. For both parties, exchanging information in investigating terrorist financing will be crucial. The BVD will be able to contribute to drawing up typical financial-economic and tax behaviour profiles of terrorist groups. If the FEC is confronted with criminal and/or terrorist subjects of groups during an investigation, it could be fruitful if the BVD could indicate whether the subjects or groups are known (and preferably how), based on its knowledge and experience. Given the (information) position of the BVD, this will not be very detailed. However, an indication of the group and violent history could yield crucial information for cautious and proportional state action. Collaboration could be advantageous to both the FEC and the BVD in their own information position. As participants in the FEC will also work together in smaller collaborations, the exceptional position of the BVD could be especially useful here.

Finally, the FEC could also play an active role internationally. The FEC will make contacts with comparable organisations in other countries and work towards setting up international collaborations.

The FEC monitoring committee, chaired by the Ministry of Finance and with the participation of the Ministry of Justice and participants of the FEC will discuss the action points outlined above in the coming period.

To reinforce the current FEC staff, six to eight full time equivalent posts will be added to facilitate intensifying the centre's activities.

4.7 Increasing the efficacy of the enforcement chain in fighting money laundering and tackling terrorist financing

Institutions under the Wet MOT are obligated to immediately disclose unusual transactions that meet the criteria on the list of indicators to the Office for the Disclosure of Unusual Transactions (Meldpunt Ongebruikelijke Transacties or MOT). The indicators fall into two categories, the objective indicators (currency exchanges in excess of 10,000 euro for instance) and subjective indicators (such as a presumption of money laundering). The MOT is an administrative unit that reports to the Directorate General of Law Enforcement of the Ministry of Justice.

The MOT processes and analyses all disclosures of unusual transactions received based on which the MOT determines whether the disclosure should be considered a suspect transaction. All unusual reports are filed for a maximum of 5 years in the MOT register. Computer systems scan all the unusual transactions, matching them with data from police registers from which suspect transactions are selected. In addition, MOT staff analyses unusual transactions manually.

When there is a "hit" it is simultaneously passed on via the intra-net on suspect transactions to the police regions and, separately, to the police bureau that supports the public prosecutor in the context of the Wet MOT (BLOM). Suspect transactions are then available to be fed into the investigation. The BLOM centralises knowledge and information used to tackle money laundering. It is also a junction of information flows on financial criminal activities in contacts between the BLOM and MOT and with (inter) national investigation teams. The BLOM is part of the Financial Crime Unit of the KLPD and is also part of the National Investigation Information service.

The actual investigation/prosecution of money laundering activities is generally in the hands of regional investigation/prosecuting authorities; the BLOM provides assistance.

There is a great number of reports of unusual transactions; the same applies to the number of suspicious cases that are referred on, but the number of convictions with regard to money laundering–

which is the ultimate goal – is limited. This is precisely one of the criticisms that the FATF has of the Dutch system.

Paragraph 2.5 already stated that this system will be completed with supervision of the duty to disclose unusual transactions. A consequence of introducing supervision of this duty will also mean that supervisory bodies can inspect the reports, which will be advantageous to the information position of the supervisory bodies. For the sake of clarity it is noted that the financial supervisory bodies are already able to mutually exchange information on the grounds of current legislation.

Furthermore, paragraph 2.2 states that introducing integrity supervision increases the options of imposing stipulations on reporting institutions with regard to training personnel to recognise unusual transactions. Finally it should be remarked that expanding the number of reporting institutions (see paragraph 3.4) will benefit the results of the Wet MOT. Naturally, the capacity of the MOT, BLOM and the investigation services should be similarly supplemented.

Now, the question is how to further strengthen the system, which is dealt with below.

1. Enhancing the results to be accomplished in terms of, for instance, convictions and confiscations.

In addition to a criminalisation of money laundering as a separate offence (see paragraph 3.6), the investigation/prosecution results should be reinforced as soon as possible. Here, the following elements are key:

- Further centralisation of the direction of activities aimed at fighting money laundering and terrorist financing
- Drawing up result-centred working agreements with investigation and prosecuting authorities in terms of, for instance, prosecutions and confiscations.
  These agreements should be adopted and/or further elaborated by the board of procurators general once they have been subjected to political testing
- Reinforcement of the anti-money laundering chain in the field of investigation and prosecution where the BLOM must ensure (1) to place projects with investigation and prosecution services and (2) for the necessary support and (3) for the monitoring of working agreements made by the board of procurators general.

At present there is too little central steering in investigating/prosecuting money laundering and financing terrorism. This centralisation will gain form (as far as prosecutions are concerned) by directing the prosecution of money laundering and terrorist financing through the centralised public prosecutors office (FOM) where the BLOM will continue to act as the pivotal agency in investigations.

There is also a lack of insufficient realistic, hard and fast working agreements with investigation and prosecuting authorities in terms of convictions and confiscations for instance. Investigating/prosecuting has no concrete goal that can be used to control and measure accountability. Here, a basic principle should be that investigating and prosecuting cases relating to the bill being considered by the Upper House containing sanctions specifically for money laundering, is a logical sequel to the main offence.

The BLOM, set up in 1999, will need to place projects with the investigating/prosecuting services and ensure the required support if the desired goal is to be accomplished. In addition, the BLOM should monitor the implementation of the work agreements and, if necessary, bring undesirable developments to the attention of the board of procurators general. This model is in line with the knowledge and information on fighting money laundering that has already been centralised at the BLOM, with the fact that the BLOM is already a meeting point for information flows on financial criminal activities and in contacts of the BLOM with the MOT and with (inter) national investigation teams in the field of fighting money laundering.

2. Reinforcing feedback to reporting institutions.
A second attention point with regard to the efficacy of the enforcement chain on money laundering/terrorist financing is formed by feedback to reporting institutions on the results achieved regarding the reported suspect transactions in terms of convictions and so on. Where feedback is given on passing on suspect transactions, there is no feedback in the follow-up trajectory, which may or may not culminate in a conviction. This is crucial for reporting institutions. It helps to accelerate the investigation/prosecution of the transactions in question.

For the sake of clarity it is noted that the feedback problem naturally relates to achieving results in terms of convictions and the like. This issue has been presented to the MOT Monitoring Committee, which will advise. Feedback (:confirming the receipt of a report and stating that the transaction has been passed on as suspect) is running smoothly through the MOT.

3. Reinforcing co-operation between the MOT and the BLOM.
Reconsidering the separate positions of the MOT and the BLOM could strengthen the co-operation between the MOT and the BLOM. Besides efficiency advantages, such a co-operation would restrict carrying out double analyses and would assure better co-ordination of activities and databases. Further integration of the MOT and BLOM activities – taking into consideration the buffer for unusual transactions – requires further research. Given that the MOT and the BLOM are so close in the chain, this could be minimised in future through integrating them more fully.

4. More attention for the quality of reports by the reporting institutions to the MOT.
The quality of the reports to the MOT, including the speed with which reporters report, could be improved. This point deserves further attention, partly in correlation with reinforcing supervision as laid down in par. 2.5. By introducing supervision of the duty to disclose it may be assumed that, in general, the quality of the reports will increase.

5. Simplifying the indicators.
Consideration should be given to seeing whether more transactions could be referred on as unusual or whether unnecessary reports could be omitted by simplifying the indicators (for example objective indicators for cash transactions, 1 subjective indicator for unusual transactions and 1 subjective indicator for situations that could be related to money laundering and/or terrorist financing). Here, working with a risk-based system rather than a rule-based system should also be explored to see if the number of unnecessary reports could be reduced and the number of useful reports increased. The conditions for moving towards a more risk-based system have now been created with the introduction of supervision of the duty to report. The integrity supervision also offers scope for formulating guidelines on reporting and to set rules relating to training. Training courses are especially important in a risk-based system because responses are no longer automatic as is the case with a rule-based system. The guidelines could for instance relate to areas that can be considered extra sensitive to money laundering or terrorist financing. The FEC, the Public Prosecutions Department, the BVD, the EU or the FATF could be earmarked by, for instance, the supervisory body or these risk areas. This point needs further clarification.

6. Unusual transactions: the Wet MOT and fighting terrorism.
In the context of fighting terrorism, the goal is to expand the subjective indicators based on the Wet Mot in addition to expanding the fight against money laundering with fighting terrorism.

With regard to lists of terrorist organisations and individuals, the most sensible way of taking action with respect to integrity supervision is offered by the bill to actualise and harmonise supervisory legislation. After all, based on customer due diligence, part of integrity supervision includes bodies under supervision that are obliged to monitor their clients in accordance with the instructions of the supervisory bodies.

7. More attention for indicators in the layering and integration phase.
In the second mutual evaluation of the Netherlands by the FATF, the FATF criticised the fact that, in the Dutch indicators system, emphasis is on the placement phase, which is primarily expressed, in greater attention for cash transactions. This must change. Greater stress on the risk-based approach could underpin this because the layering phase (concealing the origin by setting up all kinds of transactions in different countries) and the integration phase (placement in the legal circuit) are difficult to capture in objective indicators.

8. Promoting data base comparisons between the MOT and police registers.
A comparison between police registers and the MOT files is an effective and efficient way of assessing whether unusual transactions should be reported to the police. The comparisons should then be intensified.

9. Improving questions put by the Public Prosecutions Department to the MOT register.
Excess, double administrative work will be avoided when, in future, the staff of the FIU desk carry out the intake and processing of questions put to the MOT register by the National Wet MOT Officer.

10. Setting up an intelligence unit at the MOT to reinforce the reporting system.
Setting up an intelligence unit at the MOT would mean giving more attention (among other things) to HARM cases, responding more rapidly to reports that hold a risk for other reporters and better advising and informing reporters on the reporting system and, in particular, the effect of the indicators.

11. Information exchange between the MOT, BLOM, supervisory bodies, tax administration and BVD.
To strengthen the fight against money laundering and terrorism, it is crucial to reconsider the importance of the possibility of exchanging information between the MOT, the BLOM, the financial supervisory bodies, the tax administration and the BVD.

The registers of the MOT and the BLOM are police registers. In article 12 of the Decree on police registers it states that MOT and BLOM can provide information on the basis of article 15, first paragraph of the Police Registers Act, when the data could be important in preventing and investigating crimes.

In article 15, second paragraph of the Police Registers Act, however, it also states that in future data can be provided from a police register in as much as this arises from the Intelligence and Security Services Act (*Wet op de inlichtingen- en veiligheidsdiensten*). Consideration shall also be given to instructing the MOT and BLOM to provide information to the BVD as well in future.

As paragraph 4.3 already indicated, tackling money laundering and tax offences highlights numerous similar criminal working methods. In Australia, the national version of the BLOM (AUSTRAC) and of the FIOD-ECD (Australian Taxation Office) has set up a working alliance based on a memorandum of understanding which enables the regular provision of information from AUSTRAC to the Australian Taxation Office. The results of this co-operation prove highly effective. A collaboration has also been in operation between the MOT and the Tax administration/FIOD-ECD for a number of years. Via the National Public Prosecutor, the tax administration/FIOD-ECD has access to the database of the MOT to declare unusual transactions as suspicious, with the aid of tax information. In that context, an official of the FIOD-ECD was posted to the MOT. Furthermore, the FIOD-ECD and the KLPD also work together (see par. 4.3.). Further strengthening these relations, comparable to the Australian model, could be considered.

Under the influence of the planned introduction of supervision of the duty to report, the supervisory bodies could request data from the MOT on the report behaviour of the reporting institutions. This is an improvement on the current situation.

When the financial supervisory bodies research developments in the field of money laundering, the MOT will also provide them with data that contribute to such investigations. Consideration will also be given to instructing the BLOM to give data to the financial supervisory bodies in future.

The reverse approach (the provision of supervisory information to MOT and BLOM) will be reconsidered in correlation with EU legislation on the point (see par. 4.6.).

4.8. Comprehensive FIU system

In the fight against money laundering, the offices to which unusual transactions are reported play a key role world-wide. At the centre of the anti-money laundering chain are the Financial Intelligence Units (FIUs) that are excellently placed to serve a pivotal role – information is received by them and processed further. In the Netherlands, the unit responsible for this is the Office for the Disclosure of Unusual Transactions. Here, the emphasis lies both on gathering intelligence and providing information to the police for use in investigations. Financial intelligence focuses on discovering possible money laundering movements or criminal or terrorist financing in payment flows. Here the primary goal is to prevent use-use of the financial institution to launder money. In co-operation with the financial sector, the government can, based on the findings of financial intelligence, create an ever-increasing and more powerful supervisory framework to protect the freedom of capital.

However, even on the side of enforcement, the FIUs play a key role. Trends, patterns and shames can be identified and provided to the financial investigation services. Concrete indications can, after intensive research, lead to cases for the Public Prosecutions Department and the police.

Both the preventive and enforcement efforts of the FIUs play at national and international level. Co-operation and exchange of data are essential preconditions here.

Advanced telematics networks that enable data exchange are the best instrument for this.

The FIU-Net can provide for this. At present, five countries within the European Union are setting up a pilot network. In addition to, and headed by the Netherlands, the United Kingdom, France, Italy and Luxembourg are taking part. The pilot network is expected to be ready in December 2001.

Expansion to other member states within the EU based on the CRIMORG council decision 134 is crucial in the further intensification of the co-operation between the FIUs.

With a functioning FIU-Net, countries have a system with which rapid, safe and systematic information on subjects and transactions can be compared and exchanged. Subjects can be monitored along these lines in the area of finance.

By providing results to financial institutions, an early warning system can be created whereby institutions can report the transactions of certain legal subjects contained on a watch list on the basis of an objective terror indicator.

5. Budget aspects

In a letter of 26 October 2001, the Lower House was informed of the financial consequences of the action plan to fight terrorism and promote security. In this letter, the budget consequences of action points 20 through 33 of the action plan were described at aggregated level. In the extension of the

elaboration given in this paper further budgetary impact follows. Not all the policy plans contained in this policy paper are financed through the budget. Specifically, the costs of financial supervision will be claimed by the financial supervisory bodies from the institutions under their supervision, or (in instances of supervision based on the Credit System Supervision Act) indirectly charged to the state via the profit payments of the DNB. Where costs are passed on to other institutions under supervision, this will be done via the budgets and expenses schemes of the financial supervisory bodies in questions.

The table below shows, per area, as expressed in the above-mentioned letter of 26 October 2001, the budget that is allocated and the estimated number of full time equivalent posts (tbd = to be determined).[35]

	2002		2003		2004		2005		2006	
	FTEP	NLG mill	FTEP	NLG mill	FTEP	NLG mill	FTEP	NLG mill	FTEP	NLG mill
1. Expanding task of FIOD-ECD	40	9	50	10	60	12	60	12	60	12
2. Expanding control of compliance with supervisory integrity legislation	Tbd	6	tbd	6	tbd	5	tbd	5	Tbd	5
Total in NLG mill.		**15**		**16**		**17**		**17**		**17**
Total in €		**6.81**		**7.26**		**7.71**		**7.71**		**7.71**

These full time equivalent posts are broken down as follows:

Expansion of the task FIOD-ECD	**FTEPs 2002**	**FTEPs 2006**
Two extra teams fin-econ. investigation	21	35
Expansion of investigation information	6	10
Expansion of Criminal Intelligence Unit	3	5
Financial expertise	5	10
Extra activities as a result of requests for legal assistance	5	10
Total	40	60

Expanded supervisory and integrity legislation including monitoring compliance
The expansions relate to reinforcing the Financial Expertise Centre (6/8 full time equivalent posts) and to countering underground banking and intensifying financial supervision (20 - 25 full time equivalent posts). Further detailing will take place in the coming period.

The above explanation covers the initiatives described in this policy paper with the exception of the extra resources for the judiciary (paragraph 4.5), structuralizing the HARM provision (paragraph 4.3) and reinforcing the Wet MOT (paragraph 4.7).

[35] In addition to the below, this letter also contains an intensification for the material supervision of airports by means of an extra mobile goods scanned estimated at € 7 million.

The extra resources for the judiciary are dealt with in this paper but have been classed under action point 11 of the counter-terrorist action plan in a formal sense (see letter of 26 October 2001).

To structuralize the HARM provision, expansion of the duty to report under the Wet MOT and the planned improvement trajectory, a plan of approach will be prepared. The resulting formative expansions will be fleshed out in correlation with the expansion of the tax administration with regard to underground banking (see above). This will prevent the watering down of scarce expertise. Here, the starting point is that the total budgetary impact remains within the framework determined above.

6. Final considerations

The dramatic events in the United States on 11 September 2001 created enormous support for intensifying the fight against terrorism. In the Dutch context, this resulted in such measures as the anti-terrorism and security action plan and the current policy paper that responds to this.

In the domain of the financial sector, policy to reinforce supervision and the enforcement of financial supervisory and anti-money laundering legislation was embarked upon some time ago. The recent incidents do not just point out the need and timeliness of this policy but also prompted a number of additional initiatives and policy impulses. These measures contribute to further reinforcing integrity in the financial sector and with this to the fight against terrorism.

To organise the co-ordination of current and new measures in this document in a clear manner, both categories are comprehensively shown in annex 1, including the initial action points 20 up to and including 32 of the action plan to fight terrorism and promote security.

Finally, as signalled in the introduction, the success of many of the measures rests on a co-ordinated approach, at national and international level. Where this was specifically dealt with per section, is indicated in the policy paper. To encourage such an approach in an international context, the Minister of Finance sent a letter in October to fellow ministers in the EU and to the President of the European Commission to promote these aspects. Copies of this letter are contained in annex 2.

Of course, in Dutch relations emphasis is also on a co-ordinated approach, both within the government and in reciprocal co-operation between the government, market parties, supervisory bodies and investigation services. A number of the policy intentions of this paper were thus formulated as bodies of thought: they will need to be further elaborated in consultation with the parties concerned.

The Lower House will of course be informed of all progress as the occasion arises.

THE MINISTER OF FINANCE

THE MINISTER OF JUSTICE

Annex 1: Overview of action items and policy intentions

Location of document	Action items	Content	State of affairs	Planning	Responsible	Parliament. doc. no. (if applicable)	Action plan number (if applicable)
1	Reviewing technical assistance Dutch Antilles/Aruba				Interior and Kingdom Relations / Finances / Justice		
2.2	Legislative proposal on updating and harmonisation	incl. embedding integrity monitoring in financial monitoring laws	Presented to Council of State for advice	becoming effective in the course of 2002*	Finances		22
2.2.	Integrity of monitoring international agenda	Placing aspects from legislative proposal on updating/harmonisation on the EU/OECD agenda	To be initiated	2001	Finances		
2.3	Monitoring company service providers	• stronger involvement in regular supervision • adaptation of Wtk 1992 exemption scheme; • placing under MOT/Wif scope; • separate Act	Realised In preparation In preparation To be started	 01-12-2001 01-01-2002 2002	Finances		21
2.4	Legislative proposal on money transaction offices	Reinforcing money transfers control	MR 16 November 2001	becoming effective in the course of 2002*	Finances / Justice		20

2.5	Enhancing control of MOT Act and Wif Act	Introduction of supervision of reporting duty MOT and Wif through legislative proposal on large value traders	Presented to Lower House	01-01-2002	Finances	28 018	22
2.6	Directive on market manipulation	Enhancing/extending EU directive on insider dealing	Council working party	2003	Finances		
3.2	new FATF recommendations on the financing of terrorism	1. Self assessment and action plan 2. VN Treaties on terrorism 3. Penalisation of terrorism 4. Asset freezing and confiscation 5. Reporting duty concerning terrorist activities 6. Sender/beneficiary of giro transaction 7. Money transfer institutions	1.This document could serve this end 2. See par. 3.3 3. See par. 3.6 4. See par. 3.3 5.See par. 4.7 6. See par. 2.2 7. See par. 2.4	1. 2002 2. not later than June 2002 3.not later than June 2002 4.not later than June 2002 5.not later than June 2002 6.not later than June 2002 7.not later than June 2002	Foreign Affairs/Finances Finances / Justice Foreign Affairs / Finances Justice Foreign Affairs / Finances Finances Finances Finances		32
3.3	Review of 1977 Sanction Act	Modernisation of monitoring methods	In preparation				32
3.3	EU-Regulation on the suppression of financing international terrorism	Enlarging EU decisiveness in freezing assets owned by terrorists/organisations		**End of 2001 ***	Foreign Affairs/Finances		

3.4	Extension of reporting duty under the MOT Act	• Implementation of directive on extension of definition en professional categories through modification of MOT Act and AmvB (General Administrative Order) (+ monitoring regulation) • Reporting duty of pension funds /damage insurers	In preparation Analysed	01-01-2002 01-01-2002	Finances / Justice		29
3.4	Reporting duty	Increasing opportunities for reporting unusual money transports by customs during investigation	Discussed by Council of State	2002	Finances/Justice		
3.4	customs-MOT Reporting duty Tax Administration-MOT				Finances		28
3.4	Wif 1993 amendment	• Cancelling grandfathering • Compulsory identification in case of money transfers	Presented to Council of State for advice To be started	2002 2002	Finances		

3.4	Review of derived Wif identification	Reconsidering list of Gulf co-operation countries	In preparation	2002	Finances		
3.5	Review of bearer securities	Tackling opportunities for misuse of bearer securities	In Working Party	Findings before the end of 2001	Finances	17050	
3.6	Penalisation of money laundering	• Separate penalisation of money laundering instead of fencing provisions	In Upper House	2002 *	Justice	27 159	
3.7	Combating misuse of corporate entities	Legislative proposal	In preparation	2002	Justice		31
3.8	Central Accounts Register		Under analysis		Justice / Finances		
4.2	Reinforcing compliance monitors	• Uniformizatio n of law enforcement • Improving chain information + deals with FIOD-ECD/OM • Reinforcing intelligence function	To be started	2002	Finances		23
4.3	Upgrading financial-economic criminal investigation operations/financi al criminal investigations	• expanding HARM investigations • taskforce FIOD-ECD/KLPD • streamlining –ECD	In preparation	2002	Finances / Justice		23 / 25 / 26
4.4	Functional Public Prosecution Service	Centralisation of prosecuting financial-economic crime	In preparation	start on 01-04-2002	Justice		23

4.5	Judiciary	Reinforcing capacity / expertise	developed	2002	Justice		23
4.6	Reinforcing FEC	• review of FEC Act to improve information exchange + formative extension • Participation of National Intelligence Service (BVD)	In preparation	2002	Finances / Justice		24
4.8	Reinforcing MOT Act	1.Upgrading results 2. Improving feedback give to reporting institutions 3. Improving co-operation between MOT and BLOM 4. Quality of reports made by reporting institutions 5. Simplification of indicators 6. Reporting terrorist transactions 7. More attention for layering-/ integration phase 8. Encouraging database comparisons between MOT and police registers	1.In preparation 2.In preparation 3.In preparation 4.In preparation 5.To be started 6.In preparation 7.In preparation 8.In preparation	1. 2002, as soon as possible 2. 2002, as soon as possible 3. 2002, as soon as possible 4. 2002, as soon as possible 5. 2002, as soon as possible 6. not later than June 2002 7. 2002, as soon as possible 8. 2002, as soon as possible 9. 2002, as soon as possible	1. Justice 2. Justice 3. Justice 4. Finances / Justice 5. Finances / Justice 6. Finances / Justice 7. Finances / Justice 8. Justice 9. Justice		27 27 27 27 27 27 27 27 27

		9. Improving level of questioning by the Public Prosecution Service 10. Setting up institution liaison unit with the MOT	9.In preparation 10. In preparation	10. 2002, as soon as possible	10. Justice		
4.8	FIUs network	Making operational	Pilot-project ongoing	2002	Justice		30

* The FATF trusts that the 8 new recommendations set forth in the extra planning of October 29/30 2001 in Washington will be implemented not later than June 2002.

Annex 2: Letter from the Minister of Finance to the EcoFin and the European Commission

To EcoFin ministers

Date	Your letter (Reference)	Our reference
26 October 2001		FM 2001-01762 M

Subject
Terrorist financing

In line with our discussion in the last EcoFin-Council on combating terrorism, I have formulated some action-points for the EcoFin-Council in enclosed paper. I should like to point out that not all action-points are new; in fact, some of them have been on the agenda for some time. However, it might be useful to focus our attention on a broad number of issues to be addressed in relation to combating terrorism. The possible action-points should certainly be supplemented with decisions to be made by the Justice Council. I am not sure whether the Commission is preparing a joint action programme. The enclosed paper could be a useful input into a possible EU action program on terrorism.

I have sent a similar letter to all members of the EcoFin-Council, the President of the European Commission, EU Commissioner Vitorino and EU Commissioner Bolkestein.

The Minister of Finance of the Netherlands,

Mr. R. Prodi
President of the European Commission
Rue de la Loi
B- 1049 Bruxelles

Date	Your letter (Reference)	Our reference
26 October 2001		FM 2001-01762 M

Subject
Terrorist financing

Please find attached a copy of the letter concerning measures against terrorist financing, which I have sent to all members of the EcoFin-Council.

As you will notice, I have formulated some possible action-points for the EcoFin-Council in the fight against the financing of terrorism. At this moment, I do not know whether your Commission has already formulated draft proposals on the specific issues highlighted in my non-paper, but I am sure that our ideas on this very important topic will match to a high degree.

The Minister of Finance of the Netherlands,

Copy to Commissioner Vitorino

Copy to Commissioner Bolkesteinvp

MINISTRY OF FINANCE OF THE NETHERLANDS

Financial Markets Policy Directorate

Integrity of the financial sector and the fight against terrorism

Tracing the relation between financial transactions and terrorism is of utmost importance for the fight against terrorism. Strengthening the combat against money laundering will contribute to the fight against terrorist financing. However, because the combat against money laundering and terrorist financing is not a perfect match, specific action on terrorist financing is also needed. This can only be effectively organised in an integrated approach encompassing the following key elements:

- Criminalisation;
- Reporting and customer due diligence;
- Supervision;
- Effective law enforcement and prosecution; and
- (Inter)national co-operation.

Although the fight against terrorism asks for prompt action, a lot of follow up actions will be necessary too. From that perspective some thoughts will be put forward below.

FATF

- Broaden the mandate and, as a consequence, the recommendations and guidelines of the FATF and the Non Co-operative Countries and Territories (NCCT) exercise in order that they cover terrorism.
  - *Action: Implement through EU regulation the broadened FATF and NCCT recommendations*

- Speed up the process of review of the recommendations of the FATF. Key elements in this process are the implementation of customer due diligence, the fight against the misuse of corporate entities for money laundering and terrorism through i.a. trusts, and obligatory reporting and identification for relevant non-financial entities like dealers in high value goods, notaries and lawyers.
  - *Action: the review of the recommendations of the FATF should be finalised no later than June 2002.*

- Comply no later than the end of 2002 with the 40 recommendations of the FATF and the 25 FATF NCCT criteria.
  - *Action: countries and especially members of the FATF and the FATF regional style bodies should take the necessary action.*

- Help through technical assistance countries to comply with the recommendations and the NCCT criteria of the FATF.
  - *Action: organisations such as the regional development banks, IBRD and IMF should be encouraged to facilitate systems combating money laundering and terrorist financing.*

- Continue vigorously the successful Non Co-operative Countries and Territories exercise. The FATF recommendations must be effectively observed world-wide. Otherwise loopholes in the system will prevail through which the recommendations and NCCT criteria can be circumvented.
  - *Action: the members and the secretariat of the FATF should allocate more capacity to the NCCT-exercise. Apart from the consequences of the broadening of the mandate, a lot of countries in Asia, Africa and the Balkan have not yet been reviewed, while jurisdictions which have been reviewed but not identified as NCCT's have hardly been monitored.*

- Enhance compliance of NCCT-countries with the recommendations of the FATF by applying other countermeasures in addition to peer pressure, such as financial measures.
  - *Action: the FATF and the EU should evaluate in the short run the possibilities to take countermeasures that go beyond peer pressure and, if necessary, initiate regulation which would make prompt countermeasures possible.*

- Incorporate in the Article 4 consultations of the IMF the observance of the recommendations of the FATF.
  - *Action: the IMF is framing a ROSC standard (Report on the Observance of Standards and Codes) in order to effectively monitor compliance with the recommendations and the NCCT criteria in the future.*

European Union

- Reinforce the effective co-operation between financial supervisors, public prosecutors and law enforcement authorities in the field of the financial sector.
  - *Action: remove through EU regulation obstacles for the exchange of information; the separation between administrative and criminal exchange of information is too rigid.*

- Improve the exchange of information between financial intelligence units (FIU's) in EU countries.
  - *Action: facilitate through a pilot project the creation of structures contributing to a quick exchange of information between FIU's in the EU.*

- Strengthen the outcome of the money laundering systems in terms of convictions, seizures and assets freezing etc.
  - *Action: in the short run a framework should be developed to assess the effectiveness of anti-money laundering systems. To facilitate this process adequate statistics are a prerequisite.*

- Secure regulation with regard to money transfer institutions, which are very sensitive to money laundering activities and terrorist financing.
  - *Action: evaluate the effectiveness of existing money transfer systems and, if necessary, strengthen EU regulation.*

- Broaden the concept of fitness and properness of management and shareholders of financial institutions to include integrity of (the activities of) financial institutions.
  - *Action: introduce through EU regulation supervision on the integrity of (the activities of) financial institutions.*

- Secure EU regulation on the misuse of corporate entities for money laundering activities and terrorist financing.
  - *Action: combat through EU regulation the misuse of corporate entities such as trusts and bearer instruments.*

- Secure EU regulation on the reporting by customs of suspicious/unusual cross-border cash flows and other similar items.
  - *Action: initiate to that end EU regulation.*

- Organise between government authorities responsible for the functioning of financial markets in EU-member states and the Commission a teleconference facility in order to promote communication and action capability whenever critical situations appear. At present such facilities are already in place between supervisors and in the monetary and economic sphere.
  - *Action: to that end the EU Commission could take an initiative.*

The Hague, 26.10.2001

Annex 3: FATF press release in response to expanding the mandate to fight terrorist financing

Financial Action Task Force on Money Laundering
Groupe d'action financière sur le blanchiment de capitaux

Washington, 31 October 2001
FATF Cracks Down On Terrorist Financing

At an extraordinary Plenary[1] on the Financing of Terrorism held in Washington, D.C. on 29 and 30 October 2001, the Financial Action Task Force (FATF) expanded its mission beyond money laundering. It will now also focus its energy and expertise on the world-wide effort to combat terrorist financing. Today the FATF has issued new international standards to combat terrorist financing, which we call on all countries in the world to adopt and implement, said FATF President Clarie Lo. Implementation of these Special Recommendations will deny terrorists and their supporters access to the international financial system..

During the extraordinary Plenary, the FATF agreed to a set of Special Recommendations on Terrorist Financing[2] which commit members to:

- Take immediate steps to ratify and implement the relevant United Nations instruments.
- Criminalise the financing of terrorism, terrorist acts and terrorist organisations.
- Freeze and confiscate terrorist assets.
- Report suspicious transactions linked to terrorism.
- Provide the widest possible range of assistance to other countries. law enforcement and regulatory authorities for terrorist financing investigations.
- Impose anti-money laundering requirements on alternative remittance systems.
- Strengthen customer identification measures in international and domestic wire transfers.
- Ensure that entities, in particular non-profit organisations, cannot be misused to finance terrorism.

In order to secure the swift and effective implementation of these new standards, FATF agreed to the following comprehensive Plan of Action:

- By 31 December 2001, self-assessment by all FATF members against the Special Recommendations. This will include a commitment to come into compliance with the Special Recommendations by June 2002 and action plans addressing the implementation of Recommendations not already in place. All countries around the world will be invited to participate on the same terms as FATF members.

- By February 2002, the development of additional guidance for financial institutions on the techniques and mechanisms used in the financing of terrorism.

- In June 2002, the initiation of a process to identify jurisdictions that lack appropriate measures to combat terrorist financing and discussion of next steps, including the possibility of counter-measures, for jurisdictions that do not counter terrorist financing.

- Regular publication by its members of the amount of suspected terrorist assets frozen, in accordance with the appropriate United Nations Security Council Resolutions.

- The provision by FATF members of technical assistance to non-members, as necessary, to assist them in complying with the Special Recommendations.

In taking forward its Plan of Action against terrorist financing, the FATF will intensify its co-operation with the FATF.style regional bodies and international organisations and bodies, such as the United Nations, the Egmont Group of Financial Intelligence Units, the G-20, and International Financial Institutions, that support and contribute to the international effort against money laundering and terrorist financing.

FATF also agreed to take into account the Special Recommendations as it revises the FATF 40 Recommendations on Money Laundering and to intensify its work with respect to corporate vehicles, correspondent banking, identification of beneficial owners of accounts, and regulation of non-bank financial institutions.

The FATF is an independent international body whose Secretariat is housed at the OECD.

The twenty nine member countries and governments of the FATF are: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; Turkey; United Kingdom and the United States. Two international organisations are also members of the FATF: the European Commission and the Gulf Co-operation Council.

For further information, please contact Helen Fisher, OECD Media Relations Division (tel: 33 1 45 24 80 94 or helen.fisher@oecd.org) or the FATF Secretariat (tel: 331 45 24 79 45 or contact@fatf-gafi.org)

1 Attended by representatives of the 31 FATF members and 18 FATF-style regional bodies and observer organisations. Regional bodies and observer organisations included the Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Eastern and Southern Africa Anti-Money Laundering Group, the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures of the Council of Europe, the Asian Development Bank, the Commonwealth Secretariat, the European Central Bank, Europol, the Inter-American Development Bank, the International Monetary Fund, the International Organisation of Securities Commissions, Interpol, the Offshore Group of Banking Supervisors, OAS/CICAD, the United Nations Office on Drug Control and Crime Prevention, the World Bank, and the World Customs Organisation.
2 See the text of the Special Recommendations in Annex.

ANNEX

FATF Special Recommendations on Terrorist Financing

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalising the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

III. Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

V. International Co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts
and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

VI. Alternative Remittance

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

VII. Wire transfers

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

VIII. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

(i) by terrorist organisations posing as legitimate entities;

(ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and

(iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.