

UPDATE
Counter-terrorism measures in the Netherlands
23 June 2006

A – Bill on the expansion of competencies in criminal investigation and prosecution of terrorist crimes (Wijziging van het Wetboek van Strafrecht, en het Wetboek van Strafvordering en enige andere wetten ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven)

1. Status

17 June 2005 this Bill and its accompanying note on explanation was presented to the House of Representatives (Tweede Kamer) (Kamerstukken II 2004/2005, 30 164, nr. 1-3). After having adopted several amendments, the House of Representatives adopted the Bill with a clear majority of the votes. The revised version has been sent to the Senate (Eerste Kamer). This Chamber decided to deal with the Bill on 12 September 2006. The Minister of Justice strongly urged the Senate to start investigating the Bill before summer recess. However, the Senate has not yet responded to this request.

2. Content of the Bill

The Bill encompasses a wide variety of new powers and expands existing powers. These changes include the following.

In order to use special criminal investigation methods (e.g. telephone taps, infiltration and observation) it is no longer necessary to fulfill the requirement of 'reasonable suspicion' in the criminal sense. It is now sufficient that there are *indications (aanwijzingen)* that preparations for a terrorist attack are made. This means that powers can be used against persons that cannot yet be qualified as a suspect in the criminal sense. It is possible that persons that are not subject of the investigation may be affected by the investigation powers, simply because they stand in relationship to a person against whom there are indications that he/she is planning a terrorist attack.

Furthermore, this law expands the possibilities for gathering information on people and groups of people that are possibly planning a terrorist attack. In that light, the law allows for the joining of databanks.

Besides that, the law expands the possibilities to detain suspects of terrorist attacks. Whereas before it was necessary to fulfill the requirement of 'serious grounds' for considering that a person is involved in planning or committing a terrorist crime, it now suffices that there exists a simple suspicion. In case Government wishes to prolong the detention, it is still required that the criterion of 'serious grounds' is met. However, the suspect may now be detained for a longer period of time. After the first 90 days (as is currently the maximum period of detention), the law allows for a multiple extension of three months, up until a maximum of two years. Throughout this entire period Government is not obliged to give the defendant complete access to the proces files.

Finally, the law authorizes the public prosecutor to appoint an area or situation where a preventive search operation may be held (preventief fouilleren). Currently, this power is reserved for the city Mayor.

B – Status of other Bills

1. Bill on Administrative Measures for National Security (Wetsvoorstel Bestuurlijke Maatregelen Nationale Veiligheid)

19 June 2006 the Bill was sent to the House of Representatives (Kamerstukken II 2005/2006, 30 566, 1-3). It is not clear when this Bill will be discussed.

2. Bill on Protected Witnesses (Wetsvoorstel Afgeschermde Getuigen)

(Kamerstukken II, 29 743, nrs. 1-28 en A-F)

On 9 May 2006 the Senate declared the Bill to be ready for plenary discussion in the Chamber. After plenary discussion the Senate will vote on the Bill.

3. Bill on the Penalization of Glorifying Serious Crimes (Wetsvoorstel Strafbbaarstelling Verheerlijking Zeer Ernstige misdrijven en ontzetting uit het beroep)

The Minister is determined to send the Bill for consultation to advisory organisations this month. This fall the Bill will most likely be sent to the House of Representatives.