

## Summary

# The future of the special law enforcement agencies

Criminal investigations in Dutch law enforcement reveal a diverse picture. In addition to regular police authorities, Dutch law enforcement consists of numerous special agencies. A particularly large number of these specialize in matters relating to planning legislation. For our purposes here, we have defined special law enforcement agencies as 'agencies that enforce the law and operate under the auspices of a general administrative body, which agencies are responsible at least in part – if not entirely – to fulfil investigative tasks in the framework of the general system of criminal proceedings'.<sup>1</sup> According to this definition, the Netherlands counts over twenty nationally operating special law enforcement agencies. Many of these agencies fulfil supervisory and monitoring tasks over and above their investigative activities.

The development of this patchwork quilt of special law enforcement agencies has often been explained as a product of the different *specific* tasks that these agencies fulfil in *specific* areas – areas governed by *specific* planning legislation. What is more, these agencies fall under different special ministerial departments, which in turn, gives rise to considerable variation in basic policy guidelines and priorities regarding monitoring and investigative tasks. There is a drawback to this development, namely that law enforcement is not always organized with optimal efficiency – especially where cooperation with other agencies or regular police authorities is concerned.

The 1998 Governmental Agreement states that 'the integration of sections of special law enforcement agencies within the organizational framework of the police at national level is desirable in the interests of reinforcing cohesion in law enforcement and democratic monitoring. In addition, provisions will be made for merging law enforcement agencies.'

In late 1998, the Governmental Agreement and Special Law Enforcement Agencies Project was set up to lay the groundwork for the government's decision-making process. The project group focused on three primary activities.

- 1 A comprehensive survey of special law enforcement agencies, which was conducted by five inter-ministerial working groups.

1 This definition was used in the framework of the 1998 Governmental Agreement and Special Law Enforcement Agencies Project.

- 2 Consulting the Public Administrative Council for advice on democratic monitoring of the special law enforcement agencies.
- 3 Consulting the Research and Documentation Centre (WODC) for advice relating to the tasks, operation, mutual cooperation and governing of special law enforcement agencies.

Acting on behalf of the WODC, Professors C.J.C.F. Fijnaut and H.G. van de Bunt drew up a memorandum containing the recommendations requested. The project group's report *Transparantie en samenhang in de bijzondere opsporing* (clarity and cohesion in special law enforcement), which includes the WODC's recommendations, was submitted to the government in November 1999.

In taking its position, the government proposed that a distinction must be made between the special law enforcement agencies responsible primarily for (administrative) inspection and the agencies entrusted with criminal law enforcement tasks. If introduced, this distinction would leave only *four* special law enforcement agencies active in matters relating to finance and economy, agriculture, the environment and social security. These agencies fall under the following four ministries:

- Finance
- Agriculture, Nature Management and Fisheries
- Public Housing, Spatial Planning and the Environment
- Social Affairs and employment

On 2 March 2000, the WODC organized a meeting of experts. The participants – academics as well as officials in the field – met to discuss the future of special law enforcement agencies. The meeting was opened by the authors of the WODC's memorandum. The platform was then turned over to Professor Y. Buruma, who teaches criminal law and the law of criminal procedure at the *Katholieke Universiteit Nijmegen* and Professor C. van der Vijver, who teaches public administration at the *Universiteit Twente*, to present their views on the problems.

On conclusion of the introductions, the participants took over the floor. Naturally, the government's position featured among the issues covered in the ensuing plenary discussion, which was chaired by J.M. Nelen, researcher supervisor at the WODC.

The WODC's recommendations and the introductory talks held by other academics have been incorporated into this report. We have not included a separate account of the plenary discussion as the main contents of that discussion were already included in the contributions by Professors Van der Vijver and Buruma. Incidentally, the latter two contributions also comment on the government's position, unlike the opening

article by Professors Fijnaut and Van de Bunt, which formed part of the foundations for the project group's report, and consequently, the government's position.

Fijnaut and Van de Bunt begin by placing the issue of special law enforcement agencies in an historical context. They believe that a look at the historical background is useful in gaining a solid understanding of the position and tasks of special law enforcement agencies within the system of government. They continue with a discussion of developments in crime that have put the current approach to criminal law enforcement to the test. They also focus in on recent organizational developments in special law enforcement agencies, the police and the Public Prosecutions Department. The authors point to an 'osmosis effect'. While special law enforcement agencies have come into increasing contact with 'ordinary crime' as a result of their special tasks, regular police authorities now encounter problems in areas, which were once the exclusive domain of special agencies (e.g. environmental matters). As a result, these agencies and regular police authorities have grown closer in their efforts to combat serious forms of crime.

Fijnaut and Van de Bunt then go on to follow up on this finding as well as on the merger between the Financial Information and Investigation Service (FIOD) and the Economic Surveillance Department (ECD). Step by step, they explore the options for and obstacles to more extensive mergers, the integration of sections of special agencies into the planned Criminal Investigations Division of the National Police Services Agency (KLPD) and the establishment of an 'association' of special law enforcement agencies. The authors consider the latter option to be the most realistic at this juncture. They propose that special law enforcement agencies and the KLPD set aside part of their staff capacity as a common 'reserve of strategic manpower'. They also advocate incorporating – insofar as possible – the investigative support resources for special law enforcement agencies into the KLPD.

Although Buruma favours the idea of a pool of special investigative resources to fight serious crime, he stresses that the tasks of most special law enforcement agencies extend far beyond organized crime and organizational crime. He questions the necessity of drastic restructuring. Moreover, he fears that the stricter distinction between monitoring and law enforcement will intensify judicial repression in planning legislation. Buruma sets store by law enforcement agencies who understand the administrative and the judicial system and considers the dis severment of the fundamental tie between monitoring and law enforcement a step backwards.

Van der Vijver finds the clear direction of policy in the government's position a major advantage. All the same, he makes various side comments about the proposals. The policy goals are, in his opinion, based on internal organizational analyses and not on

analyses of the actual activities of the different special law enforcement agencies and the context in which they function. As regarding that context, he points out such factors as the ever-growing body of planning legislation, its increasing complexity, the European influence, tremendous political pressure to perform (in law enforcement) and the fine balance between serving economic interests and those of criminal investigations in law enforcement. Special law enforcement agencies now also face various new players in the field, such as private investigative organizations and supervisory bodies.

Buruma and Van der Vijver both feel the government's failure to take account of the public in its fundamental considerations to be a significant shortcoming in its position. The project group's report is described as a document written by and for the agencies – a report in which law enforcement's social function does not receive the attention it merits. The authors also note a discrepancy between the focal aspects of the Governmental Agreement and the proposals submitted in late 1999. The relationship between special law enforcement agencies and regular police authorities, a focal point in the Governmental Agreement, falls almost entirely by the wayside in the memorandum on the government's position. This point was also emphasized in the course of the plenary discussion at the meeting of experts on 2 March 2000. Incidentally, during that discussion, various participants felt that the lack of an official response from police authorities to the government's position was significant.

The general conclusion in the three contributions in this report was that the government's plans to establish clarity in law enforcement are a step in the right direction. This also tended to be the consensus during the discussion at the meeting of experts. Nonetheless, various significant aspects received inadequate attention and many feel that the plans regarding the fight against organized crime and serious forms of organizational crime are not extensive enough. Special law enforcement agencies and regular police authorities have grown so close in their efforts to fight these areas of crime that formal provisions for cooperation should be incorporated in the framework for law enforcement. In emphasizing coordination between special law enforcement agencies and regular police authorities, the government is striving to maintain the three pillars of law enforcement: the police, the Royal Military Constabulary and special law enforcement agencies. Various experts, in contrast, advocate further integration of authorities and/or the establishment of an association to tackle serious forms of crime. The debate on this issue is nowhere near resolution.