

Summary

The Ministry of Justice on the world stage

On the road towards an internal balance

Evaluation of the international policies of the Ministry of Justice and DEIA in particular

BACKGROUND

The internationalization and Europeanization of the policies of the Ministry of Justice have significantly increased during the last two decades. This has led to the situation where the Justice policy regarding many issues which are of fundamental importance for the establishment of a safe and just society is no longer being developed at the national, but rather at the international level. The overarching objective of the Ministry of Justice is to promote a European and international legal order.

The Ministry of Justice finds itself in a complex and dynamic international environment where there is a wide range of topics on the agenda. It is a relatively small but important player in a complex playing field with very different actors and organizations, each with its own rules and procedures. Within this playing field the Ministry of Justice has to act in a *consistent, coherent and effective manner* to bring Dutch interests to the attention of the appropriate forum at the right time. All this sets high demands for the organization of international tasks within the Ministry. The positions to be introduced in the different international organizations should be coordinated. In conjunction with this, the development of a vision of and a strategy on international judicial cooperation is essential.

The Ministry has only recently implemented organizational changes resulting from this internationalization. In order to bring about more direction, coherence and focus in the international activities of the Ministry, the Department for European and International Affairs (DEIA) was established in October 2006. The creation of DEIA has resulted in a significant change. DEIA has been placed *alongside* the existing departments. This is because the Directorates-General (DGs) and their (policy) departments will remain responsible for the international aspects of their national policy areas. The starting point for the division of tasks and of work between the policy departments, on the one hand, and DEIA, on the other, is cooperation based on *mutual complementarity*. DEIA's contribution to the international work of the Ministry of Justice is threefold: it is responsible for policy development and the implementation of a Justice-wide *vision and strategy*; it will ensure a *coordinated and effective position* of the Ministry at the international level; and it *facilitates, advises and informs* the political and administrative leadership and the policy departments in a logistical and instrumental sense.

OBJECTIVE

The purpose of this research is to understand the role and influence of the Ministry of Justice, and DEIA in particular, in EU, bilateral and multilateral decision-making processes. Moreover, the question is raised to what extent the work of DEIA contributes to the achievement of the overarching objective of the Ministry of Justice in the international field. In addition, the research can provide building blocks by which to better anchor the international work of the Ministry of Justice, and DEIA in particular.

RESEARCH QUESTIONS

The main research questions are as follows:

1. How has the Ministry of Justice and more in particular DEIA performed with regard to the:
 - a. EU decision-making processes, including intra-ministerial and inter-ministerial coordination in the JHA field;
 - b. Bilateral and multilateral decision-making processes, including intra-ministerial and inter-ministerial coordination, if any?
2. How does the Ministry of Justice, and DEIA in particular, deal with the internal agenda management of international files?

METHODOLOGY

The evaluation study consists of two parts. **Part 1** of the study consists of the analysis of ten case studies. It concerns six decision-making analyses of European, bilateral and multilateral files. Part of the study also encompasses four cases analysing the agenda management processes of international files within the Ministry of Justice.

The research team worked with a selection of files compiled by the WODC and DEIA on the basis of the *role of DEIA* in the topic in question. The files for the analysis of the decision-making processes were chosen from the two main divisions of DEIA, namely the European Union Division (DEIA/EU) and the International Relations and Projects Division (DEIA/IBP).

Finding answers to the two research questions on the performance of the Ministry of Justice and DEIA in the European, bilateral and multilateral decision-making processes and the internal agenda management of international files, are both based on the methodology of a *retrospective process evaluation*. In each decision-making case an analysis of the processes has been made to determine the extent to which predetermined policy objectives were achieved. In each case the conclusion addresses the achievement of the policy objectives, the course of the process in question (within the Ministry of Justice, the Netherlands and internationally) and DEIA's role in the case (primary responsible, not primarily responsible, etc.) assessed on the basis of the *tasks* assigned to DEIA. For the file-transcending conclusions of the decision-

making processes (research question 1) the conclusions of the individual cases were tested against a review framework.

Research Question	File	Involvement of DEIA
1. Decision-making processes		EU Division
1a. European decision-making processes	JHA Council	DEIA primary responsibility
	Eurojust	DEIA not primarily responsible
		IBP Division
1b. Bilateral and multilateral decision-making processes	Visit to Surinam	DEIA primary responsibility
	Agreed Steps	DEIA initially not primarily responsible (it is now)
	Centre of Expertise in Human Trafficking	DEIA not primarily responsible
	Human Rights Strategy	Other ministry primarily responsible
		DEIA involvement
2. Agenda management	International adoption	No DEIA involvement
	EU-PNR	Initiative of DEIA
	Sanctions Directive	Transfer of pioneering role
	WOTS	No DEIA involvement

Table 1: Overview of the reviewed files and DEIA involvement

This framework consists of criteria for the achievement of the policy objectives, criteria for effective international/European interest representation, criteria based on the guiding principles of the international work within the Ministry of Justice and the criteria for carrying out the tasks of DEIA. To answer research question 2 on the internal agenda management processes the conclusions of the individual files were also tested against assessment framework. It was thereby considered whether internal guidelines exist concerning agenda management processes within the Ministry related to international files, the principle of ‘national is international’ was looked at, it was considered whether DEIA and the policy departments have regular consultations on the international agendas, and the way in which DEIA identifies, initiates, coordinates and then transfers international files was also studied.

The assessment frameworks are based on the following internal documents: the *European and International Policy Framework 2008-2010* (EIBK); the Formation and the Organization Report (F&O report) for the creation of DEIA; and additional *literature* from the abundant academic literature, reports and similar studies at other departments on effectively promoting national interests, negotiating and lobbying in the European Union, effective national policy coordination and agenda setting. The analyses of the files are based on *desk studies* (a study of available internal e-mail correspondence, documents and file notes, internal notes, European papers, working group reports, instructions and speeches) combined with semi-structured

interviews with officials who are most involved within and outside the Ministry of Justice. For each file at least three officials within and/or outside the Ministry were interviewed.

In addition to the case studies, **Part 2** of the research provides a broader perspective of the international role of the Ministry of Justice and of DEIA in particular. First, the research team embarked on a '*contextual analysis*', thereby providing a general impression of how the Ministry of Justice operates internationally. This was done on the basis of additional *face-to-face* and telephone interviews conducted with some twenty people within and outside the Ministry in the Netherlands and abroad.

Secondly, an analysis of the international secondments and training policies was made. This analysis of the horizontal task of DEIA has been made because the secondment policy can potentially play an important role in the performance and strengthening of the Ministry's international role. It also gives an insight into the collaboration within the Ministry, for example in the case of the return of a seconded official. Moreover, this policy will contribute positively to effectively promoting the interests of the Netherlands in international organizations as well as strengthening bilateral relations. Even Government-wide, this topic is seen as a very important issue.

Finally, for the purpose of further illustration, additional research on literature was carried out and interviews were conducted concerning the (different stages of) the development of International Affairs Departments in eight other ministries. This was done in order to make a comparison with other ministries as well as to offer a theoretical contrast regarding the question of how the Ministry of Justice has organized its international work.

RESULTS OF THE ANALYSES OF THE DECISION-MAKING FILES

A total of six decision-making cases were analysed, namely: the preparation of the **JHA Council** (November 2008), the revision of the **Eurojust Decision**, the file on the visit to **Surinam**, the **Agreed Steps** (a bilateral framework between the U.S. and Netherlands), the project for the establishment of a **Centre of Expertise in Human Trafficking** in Bulgaria, and the input of the Ministry of Justice in the **Human Rights Strategy** a memo from the Ministry of Foreign Affairs. The review took place on the basis of the assessment indicators. Those involved the degree of the achievement of policy goals, the effectiveness of decision-making processes and coordination, the main principles of the international role of the Ministry of Justice and the DEIA's task performance. Moreover, successes, bottlenecks and areas for improvement were identified.

The file-transcending conclusions are as follows:

- 1. *The Ministry of Justice's European, multilateral and bilateral promotion of its interests is, as a rule, both professional and effective, given the generally good results.***

In five of the six cases examined, the predetermined policy goals were achieved more than expected (Surinam), fully attained (the Centre of Expertise in Human Trafficking, the Human Rights Strategy) or largely achieved (JHA Council, Eurojust). The European decision-making processes involve so many different players with different and/or conflicting interests that a Member State can never fully achieve all of its goals. In one case, *Agreed Steps*, the decision-making process still had to be commenced.

- 2. *The position of the Ministry of Justice in the examined decision-making cases is not always considered to be timely and proactive. However, this has not prevented a good result from being achieved.***

One of the criteria for effective interest representation concerns the formulation of a *timely and proactive* position of the Ministry of Justice in order to influence the decision-making process. This criterion was not met in most of the files. In the Eurojust file, for example, the Netherlands did belong to the group of member states taking the initiative for the amendment of the Eurojust Decision. However, the first major step, the actual joint drafting of the initiative proposal, was missed by the Ministry. In the promotion of the Ministry of Justice's interests in the Human Right Strategy note that was drafted by the Ministry of Foreign Affairs, the Ministry only took action after it was given the opportunity to do so by the Ministry of Foreign Affairs.

Also concerning the bilateral cases examined, timeliness and proactivity seem to be a major concern. In those cases, the policy position of the Ministry is determined in a rather ad hoc manner and sometimes only at the last minute.

- 3. *The coordination processes and cooperation between DEIA and the policy departments do not always proceed smoothly. Apart from that, this does not prevent the Ministry of Justice from normally speaking with one voice in international affairs.***

A prerequisite for effective interest representation is a *consistent, coherent, and flexible input by the Ministry of Justice*, which is recognised and accepted by all Dutch actors and, if necessary, this can be adjusted if circumstances so require. This is the responsibility of DEIA within the international role of the Ministry of Justice. The two European decision-making files demonstrate that the coordination procedures have become a settled routine within the Ministry of Justice. In the process prior to the EU decision-making processes there might sometimes be a difference of opinion between the departments involved, but ultimately the Ministry of Justice/The Netherlands speaks with one voice.

The picture that emerges from the bilateral decision-making files is somewhat diffuse in nature. This can be explained by the fact that bilateral coordination is not only limited to the directorates and policy departments within the Ministry. In those cases DEIA also has to deal with executive agencies, other more independent bodies of the Ministry and related organizations which have often developed their own independent bilateral relations. They are difficult to coordinate. This is apparent in the Surinam file, where the Dutch Embassy in Paramaribo is surprised to see the large number of actors from the Ministry of Justice that are doing business there, apparently without any coordination. The visit of the Minister of Justice to Surinam has led to the Ministry's position being more consistent and coherent.

The analyses of the files provide the impression that the *cooperation, mutual information and knowledge sharing* within the Ministry of Justice is variable. The research team has noted that cooperation in itself between the (policy) departments and DEIA is not the main problem. They do cooperate because their work requires them to do so. At the request of DEIA, those responsible for the files have provided a substantive input concerning the JHA Council, the visit to Surinam, etc. However, stronger forms of cooperation, such as an active and mutual exchange of information and knowledge sharing, seem to be very difficult to obtain in practice. A positive example of a good information exchange and knowledge sharing within the Ministry was the "co-production" between the Legislation department and DEIA in the Human Rights Strategy file.

4. Determining strategy and prioritization within and between files is underexposed.

An important indicator of effective interest representation concerns the extent of *strategy determination* within a file, which can be translated into the predetermined level of ambition, prioritization, the mobilization of resources, the role of the political and bureaucratic leadership, etc. It is striking in almost every case analysis that the Minister of Justice himself is very closely involved in determining the level of ambition to achieve the results within a given file. The Eurojust file is a clear example of a strategic approach within a file. The secondment of a civil servant of the ministry of Justice to the European Commission, working on the Eurojust file, has had strategic value for the Netherlands. However, in broader sense, DEIA's determination of strategy in the files seems to be slightly underexposed.

According to the EIBK, DEIA should pay more attention to fulfilling its *strategy and vision-forming tasks* by prioritizing multilateral and bilateral cooperation, for example by establishing a policy framework for the United States or the United Nations, or with regard to other parties with which the Ministry of Justice has permanent and priority relations. The case studies have shown that these strategic frameworks were still not present. DEIA is currently developing such strategic policy frameworks. The Surinam file is a good example where intensive coordination by DEIA has resulted in a more structured approach by the Ministry of Justice in the medium term.

5. The Minister and State Secretary as well as the senior civil servants are well supported by DEIA in the performance of their international responsibilities.

Regarding DEIA's *facilitating role*, it is noted that with the start of DEIA the facilitation of the political and administrative top levels has been substantially improved. DEIA has direct access to the Minister and State Secretary and knows how to translate their wishes. Also the other Directorates-General now acknowledge that DEIA works for them as well. Admittedly, these logistical and substantive coordination tasks are very labour intensive for DEIA.

Based on the above conclusions, a list of the identified successes, bottlenecks and/or improvements can be made as follows:

Successes

- With the emergence of DEIA the support to the Minister and State Secretary and the senior civil servants has greatly improved.
- The routine coordination processes within the Ministry are running smoothly, both concerning the European and the bilateral files.
- Logistical and substantive coordination of bilateral files by DEIA have led to a more consistent and coherent policy by the Ministry of Justice.
- Expertise, creativity and commitment of the civil servants within the Ministry of Justice contribute positively to achieving the required results.

Bottlenecks

- Mutual exchange of information and the active sharing of knowledge within the Ministry remains an issue.
- Cooperation within the Ministry does not always run smoothly. Sometimes there seems to be a certain ambiguity about the roles and the division of responsibilities between DEIA and the (policy) departments.
- Short-term activities have priority and are very labour intensive. These detract from the more strategic tasks of DEIA, which in the longer term could really save time and work.

Improvements

- International prioritization: the work is diverse, voluminous and so extensive that everyone will benefit from more clearly defined goals.
- The work could be more on time and proactive.
- International strategic policy frameworks for example for the UN, the Council of Europe or bilateral relations could help to better streamline operations within the Ministry of Justice.
- Procedures on how to deal with differences of opinion in the drafting of a '*BNC-fiche*' (who is responsible?) could be better described, for example in a new version of the '*EU-routeplanner*'.

RESULTS OF THE ANALYSES OF THE AGENDA MANAGEMENT FILES

Four files concerning the internal agenda management of international files were: *international adoption, EU-PNR, Sanctions Directive* and the file on the Enforcement of Criminal Judgments (Transfer) Act (*WOTS*). The conclusions on the files were reviewed according to the following criteria: internal guidelines on international agenda management; the 'national is international' principle; DEIA and the policy departments have regular consultations on agenda management issues; and DEIA identifies, initiates and coordinates, if necessary, and then transfers the files to others.

1. *DEIA is quick to adopt an initiating and observatory role in managing the agenda for international files.*

It concerns the role of DEIA in new international files that do not have a department or division which is directly responsible for that file. In two of the cases there has been a transfer of the pioneering role. DEIA has played an *initiating role* in the files that it has identified as having priority and which have been determined to be horizontal. DEIA in both cases identified, initiated and coordinated the file and then transferred it to another department. The transfer of the EU-PNR file has been complicated by the absence of internal guidelines for such a transfer. This was partly due to the complexity of the file. It also showed an unwillingness on the part of the departments concerned to take responsibility when asked to do so. Clearer agreements or guidelines on how to deal with a transfer before taking the initiative would help DEIA to avoid such a situation. The Sanctions Directive file for that matter was not a so-called 'orphan' file, thereby allowing the transfer to be smoother. In this case the value of DEIA initiating the file is clear.

2. *Clear internal guidelines and consultation fora to deal with or to solve agenda management issues concerning international files are lacking.*

First, the agenda management analyses revealed that there are little *internal guidelines* which can be used in case of uncertainties concerning the placement and/or transfer of a file. DEIA has frequently invested much time and effort into convincing other departments to take responsibility for an 'orphan' file. It has become obvious to the research team that the departments do not automatically pick up the new files or are willing to do so. In the analyses of the files it is not clear whether DEIA and the policy departments have sufficient *regular and ongoing consultations* on the current international files or future agendas.

3. *The information exchange between the other departments and DEIA concerning existing international files is not optimal.*

The WOTS file shows that the department responsible for delivering the file notes for the benefit of bilateral visits was well aware of the planned visit. The other way around, DEIA was not involved in identifying countries with which a WOTS-relationship was to be established. On the one hand, better information sharing would put DEIA in a position where it could provide more strategic advice and establish horizontal relationships between files. On the other

hand, the department could better anticipate requests for file notes. In the international adoption file the information-sharing process seems to be more flexible.

Based upon the above conclusions the following successes, bottlenecks and/or improvements can be listed.

Successes

- DEIA is quick to adopt its initiating and observing role in managing the agenda for international files.

Bottlenecks

- The exchange of information between the departments and DEIA.
- The initiating role of DEIA can only lead to a concrete result when the departments take over full responsibility.

Improvements

- Making more use, in a structural manner, of the meeting of the international affairs directors for discussing the international agenda and expanding or commencing structural consultations between DEIA and the policy directorates on current issues and future agendas (in addition to the already existing consultations).
- DEIA could strengthen its coordinating role by establishing intra-ministerial file teams in which the responsibilities are clearly distinguished beforehand.
- The Ministry of Justice is working on establishing a culture of active information exchange and sharing. The policy departments and the Legislation department must inform DEIA more effectively about international developments.

RESULTS OF THE INTERNATIONAL ROLE IN A WIDER PERSPECTIVE

The context analysis confirms a number of conclusions which emerged from the case studies. It is apparent that within the Ministry and DEIA there is a need for more vision and strategy in the international field. It was also concluded that the intended "national is international" connection is not yet in place. Regarding cooperation between the different departments/DGs and DEIA it has become clear that *mutual complementarity* is not always mutual (there sometimes seems to be a question of competition), may not be felt to be so and is not always acted upon. The picture created also shows that both the departments and DEIA have the impression that the other party does not have sufficient knowledge of or affinity with the international work. A final conclusion is that more attention should be paid to horizontal policy coordination.

The analyses of the secondment and training policies show that the Ministry, by virtue of DEIA, has taken an important step forward. An extensive policy document is now available, specific procedures are in place, etc. The next step will be to integrate this policy into the organization and to actively promote it. A recommendation is to more effectively imbed the current secondment policy into the human resources policy. The Ministry of Justice offers a

wide range of international training courses, but there is no training policy linked to international human resources policy. This is surprising considering that international knowledge and expertise within the department is seen as a problem (see the above paragraph).

From the more theoretical approach to the development of other international departments within other ministries it seems that the international role of the Ministry of Justice has reached maturity in recent years. DEIA will develop in the future from a *counterpart* that involves other parts of the Ministry in international policy processes to a *facilitator*. In that role DEIA should focus more on formulating the guidelines for international and European policy and to point out the new developments to the departments. Facilitating and monitoring strategic processes and taking care of horizontal coordination will then become its main tasks.

CONSIDERATIONS FOR A BETTER ANCHORING OF THE INTERNATIONAL ROLE

- Pay more attention to strategy and vision development.
- The connection between the national and international policy dimensions within DGPJS and DGRR must be better developed.
- The concept of *mutual complementarity* should be more clearly defined. The rules for the division of internal tasks and the workload should be more sharply developed and monitored.
- Invest more emphatically in the further professionalisation of the international role of the Ministry.