



Minister van Buitenlandse Zaken

H.E. Terry Davis
Secretary General
of the Council of Europe
STRASBOURG

The Hague
21 February 2006

Dear Secretary General

With respect to the specific questions you ask in your letter of 21 November 2005 concerning unlawful detention and transportation of prisoners, I hereby wish to inform you of the situation in the Netherlands.

1. In which manner does the internal law of High Contracting Parties ensure that acts by officials of foreign agencies within their jurisdiction are subject to adequate controls?

Foreign liaison officers work in the Netherlands to promote cooperation in criminal matters between the sending state and the Netherlands. These liaison officers have a diplomatic status, and under article 41, paragraph 1, of the Vienna Convention on Diplomatic Relations they are required to respect the laws and regulations of the Netherlands in the performance of their duties. A ministerial order on the activities of foreign liaison officers in the Netherlands (*Regeling buitenlandse verbindingsofficieren*; "the Regulations") came into effect on 1 April

Police Services Agency (KLPD) to instruct foreign liaison officers regarding the provisions of Dutch law relevant to their work, as well as the consequences that non-compliance with these rules could have in the worst case (annexe 1 is the Dutch text of the Regulations, and annexe 2 is an unofficial English translation of the Regulations; please note that only the Dutch text is authentic).

Foreign investigating officers sometimes operate on Dutch territory in connection with requests for legal assistance. In such cases, the foreign officers are generally present in connection with the fulfilment of a request for legal assistance made by their own country, possibly involving deprivation of liberty, but only by the Dutch authorities.

Another relevant possibility in this context is cross-border pursuit (the Convention implementing the Schengen Agreement, the Benelux Convention of 2004 and the Treaty of Enschede, which is soon to come into effect), in the course of which foreign police officers have the authority to arrest suspects under certain circumstances. The recently concluded Treaty of Prüm (Schengen III) also makes it possible for foreign police officers to operate on Dutch territory under certain circumstances. In these situations too, it is the Dutch authorities alone who make decisions about deprivation of liberty.

Status of Forces Agreements (SOFAs) can also serve as the basis for deprivation of liberty by foreign officials on Dutch territory. The relevant conditions are generally contained in the SOFA. Often, the provisions regarding the primary right to exercise jurisdiction over criminal offences favour the sending state (see the NATO SOFA, for instance). These agreements generally permit authorities of the sending state to keep an accused person in custody until he is charged by the receiving state (see e.g. article VII, paragraph 5 c., of the NATO SOFA).

In addition to the possibilities presented by the SOFAs, there is a ministerial order (*Besluit houdende aanwijzing van Duitse militaire bewakers met geweldbevoegdheid*) granting foreign military personnel the authority to operate on

Dutch territory (see also Article 1, paragraph 2 (b) of the *Rijkswet geweldgebruik bewakers militaire objecten*). It should be noted that in such cases the SOFA is the only legal basis on which the Netherlands can exercise its jurisdiction and that certain immunities may limit its scope to monitor law enforcement activity.

For the record, it should be added that the Netherlands hosts a number of international criminal courts and tribunals (the International Criminal Tribunal for the former Yugoslavia, the appeals chamber of the International Criminal Tribunal for Rwanda and the International Criminal Court). These organisations may hold detainees in special detention units pursuant to agreements between them and the Netherlands. The Netherlands has no jurisdiction within these special detention units on Dutch territory.

Cooperation with other countries' security services by the Dutch General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst*; AIVD) and Military Intelligence and Security Service (*Militaire Inlichtingen- en Veiligheidsdienst*; MIVD) is regulated by section 59 of the Intelligence and Security Services Act 2002 (*Wet op de inlichtingen- en veiligheidsdiensten 2002*; WIV). One requirement is that the interests pursued by the foreign agency in question must not be incompatible with the interests that the Dutch services are charged with pursuing. This is determined partly by reference to Dutch foreign policy, including human rights policy. The other statutory requirement is that the provision of information or support by the AIVD and MIVD must not interfere with the effective performance of their duties. In principle, it is only with permission from the Dutch service in question that covert activities may take place on Dutch territory, and subject to the conditions attached to this permission (section 59, subsection 2 WIV). The Dutch service in question is in charge of the relevant activities of the foreign agency and supervises those activities. All activities of foreign agencies on Dutch territory that do not meet these conditions are clandestine and regarded in principle as unwanted interference by foreign powers and a potential threat to state security.

The Dutch parliament (the States General) is charged with oversight of the AIVD and the MIVD. Specifically, this is the task of the Permanent Committees of the House of Representatives on the Interior and Kingdom Relations and on Defence and the House Committee on the Intelligence and Security Services. Account can be rendered to the Committee on the Intelligence and Security Services in a confidential manner regarding the more operational aspects of the functioning and organisation of the two services. In addition to parliamentary oversight, the Netherlands also has a supervisory commission for the intelligence and security services. This commission is charged with monitoring the lawfulness of AIVD and MIVD activities and with informing and advising the relevant ministers about its findings, both on request and on its own initiative. The commission is a permanent body and has access to all the information processed by the services for the purpose of carrying out its duties. On the basis of its investigations, it draws up supervisory reports which are sent to parliament accompanied by a response from the relevant minister. Secret parts of these reports are dealt with confidentially by the House Committee on the Intelligence and Security Services.

2. In which manner does the internal law of the High Contracting Parties ensure that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within their jurisdiction, whether such deprivation of liberty is linked to an action or an omission directly attributable to the High Contracting Party or whether that Party has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty?

Under article 93 of the Constitution of the Kingdom of the Netherlands, provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents become binding after they have been published. All measures depriving persons of their liberty on Dutch territory must therefore meet the requirements of article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Furthermore, article 15 of the Constitution of the Kingdom of the Netherlands provides that no one may be deprived of his liberty other than in the cases laid down by or pursuant to Act of Parliament. This is more demanding than the ECHR's foreseeability criterion. A person who is deprived of his liberty other than by court order may apply to the court to be released. Such applications are handled by the court within a time limit provided by law. If the court deems the deprivation of liberty to be unlawful, it orders immediate release.

In statute law, unlawful deprivation of liberty is defined as an offence in the Dutch Criminal Code, which contains a number of safeguards to prevent unlawful deprivation of liberty. Article 282 of the Dutch Criminal Code defines the criminal offence of unlawful deprivation of liberty. Article 282a defines the criminal offence of hostage-taking as intentionally and unlawfully depriving another person of his liberty or keeping him deprived thereof with the object of compelling another to take or refrain from a certain action. Article 283 makes it a criminal offence for anyone, through negligence, to be responsible for another person being unlawfully deprived of his liberty or kept deprived thereof. Another potentially relevant article of the Criminal Code is article 278, which makes it a criminal act to transport another person across the borders of the Kingdom in Europe with the object of unlawfully subjecting him to the power of another person or rendering him helpless.

The Royal Military Police (*Koninklijke Marechaussee*; KMAR) is charged under Dutch law with the supervision of the movement of non-Dutch nationals at international airports in the Netherlands. The KMAR is also authorised to open an investigation if there are concrete suspicions of criminal offences.

More generally, in accordance with treaty obligations within the framework of the Convention on International Civil Aviation (Chicago Convention), non-scheduled flights (other than flights for which diplomatic clearance must be obtained) transporting persons and goods require only the permission of air traffic control to

enter Dutch airspace and to land. In order to enter Dutch airspace and land, such flights must submit a flight plan. Information about who or what is being transported by a particular flight, such as a passenger manifest, is not required. If an aircraft lands on Dutch territory, Dutch legislation on customs and airworthiness permits inspections by the customs service and the Inspectorate for Transport, Public Works and Water Management, respectively.

3. In which manner does the internal law of the High Contracting Parties provide an adequate response to any alleged infringements of Convention rights of individuals within their jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims?

If specific evidence of a possible criminal offence comes to light, the Public Prosecution Service will generally investigate whether it is possible to respond with measures under Dutch criminal law. Of course, a victim of unlawful deprivation of liberty, or a person who believes that another person has fallen victim to deprivation of liberty, can also report the offence to the Dutch authorities, specifically the police.

In statute law, article 282 of the Dutch Criminal Code imposes penalties for unlawful deprivation of liberty. Any person who intentionally and unlawfully deprives another of his liberty or keeps him deprived thereof is liable to a term of imprisonment not exceeding seven years or a fifth-category fine (€45,000). If the victim suffers grievous bodily harm as a result of the offence, the offender is liable to a term of imprisonment not exceeding nine years or a fifth-category fine. If the victim dies as a result of the offence, the offender is liable to a term of imprisonment not exceeding twelve years or a fifth-category fine. The penalties

laid down in article 282 also apply to individuals who intentionally make premises available for unlawful deprivation of liberty.

Furthermore, article 282a of the Criminal Code provides that anyone who engages in hostage-taking, defined in that article as intentionally and unlawfully depriving another person of his liberty or keeping him deprived thereof with the object of compelling another to take or refrain from a certain action, is liable to a term of imprisonment not exceeding fifteen years or a fifth-category fine. If the victim dies as a result of the offence, the offender is liable to life imprisonment or a fixed term of imprisonment not exceeding thirty years or a fifth-category fine. These penalties also apply to individuals who intentionally make premises available for hostage-taking.

Article 283 of the Criminal Code defines a less severe variant of this criminal offence. That article provides that anyone who, through negligence, is responsible for another person being deprived of his liberty or kept deprived thereof is liable to a term of detention not exceeding six months or a second-category fine (€2,250). If the victim suffers grievous bodily harm as a result of the offence, the offender is liable to a term of detention not exceeding one year or a third-category fine (€4,500). If the victim dies as a result of the offence, the offender is liable to a term of detention not exceeding two years or a fifth-category fine (€11,250).

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Suspects can often be prosecuted for multiple offences arising from a single act, and the court may take all the offences into account when determining the sentence (see article 57 of the Criminal Code); the maximum sentence is then the highest maximum sentence for any one of the offences plus one third.

Victims may join any criminal proceedings to obtain damage(s), or institute civil actions against the wrongdoers, or apply to the Criminal Injuries Compensation Fund for compensation.

4. Has any public official or other person acting in an official capacity, in the period running from 1 January 2002 until the present, been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency? Information is to be provided on whether any official investigation is under way or has already been completed.

The Government of the Netherlands is not aware of any such cases of unlawful deprivation of liberty. During the period in question, it has not assisted either by action or by omission, or at the instigation of foreign agencies, in the unlawful deprivation of the liberty of any individual or the transport of any individual through Dutch territory while so deprived of their liberty. No evidence has been found of such acts during the exercise of regular oversight by various public bodies.

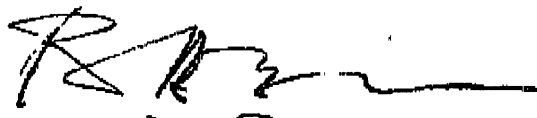
In the absence of specific evidence the Government of the Netherlands believes that a national investigation, supplementary to the international investigations being carried out by the Council of Europe and the European Parliament, would not be in the public interest. The Dutch parliament has, however, posed questions to members of government about alleged secret CIA flights and detention centres. An English translation of the answers to these questions will be made available to you as soon as possible.

I shall send a copy of this letter to the First Chamber and Second Chamber of the Dutch Parliament.

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Yours sincerely,



Bert Koenders

Minister of Foreign Affairs of the Kingdom of the Netherlands

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2002. These regulations (articles 12 and 16 in particular) require the National Police Services Agency (KLPD) to instruct foreign liaison officers regarding the provisions of Dutch law relevant to their work, as well as the consequences that non-compliance with these rules could have in the worst case (annexe 1 is the Dutch text of the Regulations, and annexe 2 is an unofficial English translation of the Regulations; please note that only the Dutch text is authentic).

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Bernard Bot

Minister of Foreign Affairs of the Kingdom of the Netherlands

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Guidelines for foreign liaison officers in the Netherlands in the area of police and judicial cooperation

8 March 2002/CJ/PK

The Minister of Justice

Acting in consultation with the Minister of Foreign Affairs;

Has decided:

§ General provisions

Article 1

1. In this regulation a 'foreign liaison officer' means an investigating officer appointed by another state for the purposes of police and judicial cooperation in criminal matters who carries out his duties on Dutch territory.
2. This regulation shall be without prejudice to the cooperation between foreign liaison officers and customs pursuant to existing international customs regulations in the field of mutual assistance and the relevant Community regulations.

Article 2

1. The Dutch central authority referred to in this regulation is the International Networks Service of the National Police Services Agency.
2. The Dutch central authority will carry out its tasks under the authority of the chief public prosecutor of the national public prosecutors' office.

Article 3

The Minister of Foreign Affairs shall send to a state which has appointed a foreign liaison officer to the Netherlands a copy of this regulation, referring to the obligations arising from article 41, paragraph 1 of the Vienna Convention on diplomatic relations (Netherlands Treaty Series 1962, 101), concluded on 18 April 1961.

Article 4

1. In accordance with article 41, paragraph 1 of the Vienna Convention on diplomatic relations, a foreign liaison officer shall carry out his duties within the framework of his powers and in accordance with Dutch laws and regulations. Insofar as applicable, the relevant treaties in force for the Netherlands and the sending state shall be complied with.
2. The person concerned will work together with the Dutch police and other services, and the competent authorities responsible for investigating offences, in accordance with the provisions of this regulation and the practical implementation thereof by the Dutch central authority.

§ 2 Job description

Article 5

1. Foreign liaison officers shall be primarily responsible for assisting in:
 - a. the exchange of information for the purposes of preventing and investigating criminal offences;
 - b. requesting the implementation of legal assistance in criminal matters;
 - c. the exchange of information for the purposes of preventing or combating public order disturbances.
2. Their duties shall in all cases include:
 - a. providing the Dutch police, judicial authorities and other investigation services with information from the sending state, in so far as is compatible with the laws and regulations of the sending state;
 - b. supervising requests for legal assistance submitted by the sending state to the Netherlands and acting as intermediaries to facilitate their implementation (incoming requests for legal assistance).
3. They shall in addition:
 - a. receive and forward Dutch information provided to investigation services and authorities in the sending state;
 - b. supervise Dutch requests for legal assistance to the sending state and acting as intermediaries to facilitate their implementation (outgoing requests for legal assistance).

4. If a Dutch liaison officer is stationed in the sending state, the duties referred to in paragraph 3 may also be carried out entirely or in part by the Dutch liaison officer.

§ 3 Performance of duties

Article 6

1. In performing their duties, foreign liaison officers shall refrain from carrying out independent investigative activities as referred to in the Code of Criminal Procedure and elsewhere, such activities including contacts with civilian informants and infiltrators.
2. If information is to be obtained or gathered in the Netherlands or if another investigative activity is to be carried out on behalf of the sending state, this shall only be done by Dutch investigating officers after consultation with and subject to the authority of the Dutch public prosecution service. If the investigation and the circumstances so require, the Dutch investigating officers may be assisted by foreign investigating officers specially transferred for this purpose, but never by the foreign liaison officer.

Article 7

1. Foreign liaison officers shall maintain contacts with the Dutch police, other investigation services and the judicial authorities through the agency of the Dutch central authority.
2. Foreign liaison officers may maintain direct contacts with the Dutch bodies referred to in the previous paragraph only if agreements to this end have been reached with the Dutch central authority.

Article 8

Foreign liaison officers may have recourse through the agency of the Dutch central authority to the public prosecutor responsible for international cooperation at the national public prosecutors' office, if this is necessary to the performance of their duties, particularly if they require the mediation or agreement of the judicial authorities.

Article 9

1. If information is exchanged through the agency of a foreign liaison officer other than on the basis of the extradition treaties and conventions on mutual assistance in force between the Netherlands and the sending state, the state from which the information originates shall determine the conditions under which this information can be used.
2. The foreign liaison officer shall ensure that the receiving state is informed of these conditions.
3. Use of the aforementioned information in criminal cases shall be possible only if the state from which the information originates has agreed to a request to this end, based on the applicable convention on mutual assistance.
4. In principle, information from Dutch police records may be provided to the sending state or its foreign liaison officer only through the agency of the Dutch central authority.
5. The competent authorities may make further agreements between the Netherlands and the sending state on the provision and use of information from police records.

§ 4 Authority and supervision

Article 10

1. The Dutch central authority shall be charged with assisting and reviewing the work of foreign liaison officers within the framework of this regulation and coordinating the associated flow of information from and to other countries.
2. The chief public prosecutor at the national public prosecutors' office shall be responsible for the activities of the Dutch central authority referred to in paragraph 1.

Article 11

In the interests of effective cooperation, foreign liaison officers shall consult with the Dutch central authority and the competent authorities at times to be arranged at a later date. In addition, they shall regularly inform the Dutch central authority of their activities.

Article 12

1. The Dutch central authority shall support foreign liaison officers in the performance of their duties and shall take all necessary measures to:

- a) inform foreign liaison officers on their appointment to the Netherlands of any Dutch statutory provisions relevant to the performance of their duties, particularly those relating to data protection and the protection of privacy;
- b) comply with their requests for advice and, where possible, provide any assistance they may need;
- c) find solutions, where possible, to problems which occur in the performance of their duties.

2. The Dutch central authority may make further agreements with individual foreign liaison officers on the implementation of this regulation.

Article 13

The Dutch central authority shall keep foreign liaison officers informed of developments which may be relevant to the sending state or the performance of their duties.

Article 14

In the interests of effective international cooperation in criminal matters, foreign liaison officers shall cooperate with the Dutch authorities in respect of judicial proceedings and any inquiries into investigative activities. This shall be without prejudice to the possibility of invoking diplomatic immunity on the basis of article 31 of the Vienna Convention on diplomatic relations.

Article 15

Before providing information to the media with regard to the performance of their duties as described in article 5, foreign liaison officers shall inform the Dutch central authority with a view to respecting Dutch interests.

Article 16

In the event of a breach of these guidelines, the Dutch authorities may decide, in the most extreme case, to take measures including those referred to in article 9 of the Vienna Convention on diplomatic relations.

§5 Final provisions

Article 17

The guidelines of 21 March 1994 on the stationing of liaison officers in the Netherlands shall be withdrawn.

Article 18

This regulation shall enter into force on 1 April 2002.

Article 19

This regulation may be cited as the Foreign Liaison Officers Regulation.

This regulation shall be published in the Government Gazette, together with the explanatory notes.

The Hague, 8 March 2002

The Minister of Justice

A.H. Korthals

Explanatory notes

Foreign liaison officers working in the Netherlands have the task of promoting legal cooperation in criminal matters between sending states and the Netherlands. These liaison officers have diplomatic status and, in accordance with article 41, paragraph 1 of the Vienna Convention on diplomatic relations (Netherlands Treaty Series 1962, 101), must carry out their activities in accordance with Dutch law.

Guidelines on the stationing of liaison officers in the Netherlands were published on 21 March 1994 and sent by the Ministry of Foreign Affairs to the embassies concerned. The guidelines sought to create a framework within which foreign liaison officers stationed in the Netherlands would carry out their activities. They were based on the European directives on the exchange of liaison officers adopted by the European ministers responsible for the police as part of the TREVI consultations in 1991.

The role of foreign liaison officers stationed in the Netherlands was discussed by the parliamentary committee of inquiry into investigative methods. The committee was of the opinion that cooperation between the Netherlands and foreign investigative services required further regulation as regards the obligation to comply with Dutch rules and reporting to the Dutch authorities. In view of this, the Ministry of Justice set up the liaison officers working group which was responsible for the survey into the need and scope for tightening up the 1994 guidelines.

In May 1998 the working group concluded that the existing guidelines were incomplete. They were not geared to the latest developments, nor were they enforceable. Furthermore, there was a lack of clarity regarding the supervisory role of the National Criminal Intelligence Division (CRI) of the National Police Services Agency (KLPD) and the national public prosecutors' office on the one hand, and the role of the regional police forces (including the organised crime squads) and the local public prosecutor on the other. The working group formulated a number of recommendations aimed at improving the situation.

Having read the conclusions and recommendations of the working group, the Minister of Justice gave a new interdepartmental working group instructions to come up with proposals for further regulations concerning the framework within which foreign liaison officers may act in the Netherlands. This regulation is the result.

Article by article

Article 1

This article defines the term 'liaison officer'. From the definition, it follows that the regulation applies to foreign investigating officers appointed to the Netherlands, but not to prosecution liaison officers seconded from other countries to the Netherlands. Nor does it apply to liaison officers whose remit does not extend to facilitating cooperation in criminal matters, such as customs or immigration liaison officers, insofar as their duties are confined to cooperation in the area of administrative law (inspection and supervision). As soon as these liaison officers carry out activities in the field of criminal law cooperation, the present regulation applies to them too. It does not affect cooperation between liaison officers and customs that is based on existing customs and Community regulations relating to mutual assistance. Furthermore, Europol liaison officers do not come within the scope of the definition. Although Europol liaison officers are physically stationed in the Netherlands they are not accredited here and the Dutch authorities have no formal supervisory function with regard to their activities. Liaison officers stationed elsewhere, who have been appointed by another state to the Netherlands, do come within the definition, provided they carry out their activities on Dutch territory.

There are developments under way which could make it possible for states outside the EU to send liaison officers who are appointed both to Europol and the Netherlands. If this happens, the regulation will apply only to the activities of these liaison officers on Dutch territory.

Article 2

Paragraph 1

The International Networks Service of the National Police Services Agency (formerly the National Criminal Intelligence Division) is the Dutch central authority. It has a coordinating role regarding the flow of information from and to other countries. The basis for this can be found in article 13, paragraph 7 of the Police Files Decree, which regulates the provision of information from Dutch police records. Pursuant to article 10, paragraph 1, the central authority also plays a supervisory role.

Paragraph 2

The National Police Services Agency comes under the authority of the national public prosecutors' office. Paragraph 2 therefore designates the chief public prosecutor of the national public prosecutors' office to oversee the work of the Dutch central authority.

Article 3

Pursuant to article 10 of the Vienna Convention on diplomatic relations (Netherlands Treaty Series 1962, 101), concluded on 18 April 1961, the ambassador of a candidate sending state must notify the Ministry of Foreign Affairs of the arrival of its liaison officer in the Netherlands.

After receiving notification, the Minister of Foreign Affairs immediately sends a copy of this regulation to the state in question, informing it of the rules which the foreign liaison officer has to comply with in the Netherlands. States that appointed a liaison officer to the Netherlands prior to this regulation taking effect will also immediately be sent a copy.

The accompanying diplomatic note clearly points out to the sending state its obligation – arising from article 41, paragraph 1 of the Vienna Convention on diplomatic relations - to comply with this regulation. Article 41 states that the laws and regulations of the receiving state must be respected.

Sending the regulation to the state in question does not automatically imply that the Netherlands will grant permission for the foreign liaison officer's arrival. A foreign request for accreditation is always submitted to the International Networks Service for advice before permission is granted. If, in the International Networks Service's opinion, there are reasons for refusing accreditation, the Service will forward the request to the national public prosecutors' office.

Nor does the fact that the regulation has been sent to a state preclude the possibility that, pursuant to article 9 of the Vienna Convention on diplomatic relations, the Netherlands may inform the sending state, at any future time, that its foreign liaison officer in the Netherlands has been declared *persona non grata*.

Article 4

Paragraph 1

Paragraph 1 makes explicit reference to the obligation resting on foreign liaison officers, arising from article 41, paragraph 1, of the Vienna Convention on diplomatic relations, to comply with the regulation.

The Netherlands has concluded agreements on mutual assistance with most of the sending states. These must of course be complied with, as far as they are applicable.

Paragraph 2

The second paragraph obliges foreign liaison officers to cooperate with the Dutch authorities in accordance with the regulation and the practical implementation thereof by the Dutch central authority. In this respect, the guidelines have clearly been tightened up in comparison with 1994, when they merely stated that it was desirable for liaison officers to take the guidelines into account in performing their duties. The term 'other services' means the special investigative services.

Article 5

This article describes the activities that in practice may form part of the remit of foreign liaison officers. If there is also a Dutch liaison officer stationed in the sending state, the activities referred to in paragraph 3 may be carried out, partly or wholly, by the Dutch officer.

Article 6

Paragraph 1

An important restriction on the powers of foreign liaison officers is that they must refrain from independent investigative operations. Nor are they permitted to maintain independent contacts with civilian informants and infiltrators.

Paragraph 2

The basic principle is that investigations on Dutch territory are carried out by Dutch investigating officers. Nevertheless, situations may arise in which it is desirable to instruct a foreign investigating officer to carry out certain investigative activities. The Special Investigative Powers Act therefore makes it possible to charge a person in the public service of a foreign state with the execution of an order to observe, infiltrate, make a pseudo purchase, or offer pseudo services or to systematically gather information. In doing so, he has to comply with the requirements laid down in the Special Investigative Powers (Cooperation) Decree (Bulletin of Acts and Decrees 1999, 549). Among other requirements, the person concerned must be authorised to

investigate offences in his own country and must have undertaken to testify with regard to his investigative actions in the Netherlands if summonsed by the Dutch authorities. Foreign liaison officers may not be charged with the execution of such orders.

Article 7

Paragraph 1

The Dutch central authority's role is twofold. First, it must supervise the activities of liaison officers. This supervision can only take place if the authority has an overall view of the activities of liaison officers. Second, the central authority coordinates the flow of information to and from other countries. In this context, the authority must be aware of the information exchanged between police regions and liaison officers. The aim of coordination is partly to link current investigations in the Netherlands with other international legal assistance requests. In addition, it helps assess the extent to which information supplied by foreign liaison officers can be used in the Netherlands. For example, the way the information was obtained is of importance.

To ensure the effective implementation of supervisory and coordinating tasks, it is necessary for foreign liaison officers to inform the International Networks Service as soon as possible of their activities. The manner in which cooperation then takes place depends in part on any agreements between the sending state and the Netherlands.

Paragraph 2

In practice, the activities of a liaison officer vary from incidental information exchange to intensive police cooperation with a Dutch investigative team over a long period of time. In view of this, paragraph 2 allows for different degrees of supervision of the activities of foreign liaison officers. For example, in emergencies written agreements can be drawn up with the Dutch central authority regarding the cases in which foreign liaison officers may have direct contact with the relevant police service or competent judicial authority, subject to the condition that the officer informs the central authority of such contact without delay.

Article 8

The national public prosecutors' office can help foreign liaison officers at their request through the agency of the Dutch central authority by coordinating activities that have to be undertaken at local level by or under the responsibility of the public

prosecutions service in implementing a request for legal assistance. Pursuant to article 3 of the Public Prosecution Service (Reorganisation) and National Public Prosecutors' Office (Establishment) Decree (Bulletin of Acts and Decrees 1999, 197) the public prosecutors at the national office are themselves responsible for the prosecution of:

- a) offences that in view of their seriousness or frequency or the fact that they are committed on an organised basis constitute a serious breach of the legal order and whose prevention and prosecution requires a high degree of financial and fiscal expertise;
- b) offences committed on a national or international scale, where prosecution by the national public prosecutors' office is appropriate in view of the division of tasks between the national crime squad and the regional police forces.

Article 9

Paragraph 1

Where there is an exchange of data via a foreign liaison officer on the basis of a relevant extradition treaty or convention on mutual assistance, the use of the data is governed by the rules laid down in these agreements. In other cases, the state from where the data originates sets conditions for the use of the data.

Pursuant to article 13, paragraph 5 of the Police Files Decree, data from Dutch police records are always provided on the understanding that they will be used only for the purpose for which they were issued. The administrator of the file in question may, in exceptional cases, give permission for foreign police authorities to use the information for another purpose if the proper fulfilment of police responsibilities in another country makes this necessary. The person supplying the information from the Dutch police records must of course comply with the provisions laid down by or pursuant to the Data Protection (Police Files) Act.

Paragraph 2

If information is exchanged between the Netherlands and a sending state through the agency of a foreign liaison officer other than on the basis of the relevant extradition treaty or mutual assistance convention, it is the officer's responsibility to inform the receiving country on the conditions that the sending state has set on the use of its information.

Paragraph 3

Exchanged information may only be used as evidence in criminal proceedings with the explicit permission of the competent judicial authorities of the country from where the information originates. Such use therefore requires a request for legal assistance to the country concerned.

Paragraph 4

Pursuant to article 13, paragraph 7 of the Police Files Decree, the provision of information from Dutch police records to other countries must in principle take place through the National Police Services Agency. The direct provision of information may take place only in accordance with agreements made with foreign police authorities, as long as these agreements have been approved by the Minister of Justice (in the case of information from a file established in order to carry out an activity falling under the authority of the public prosecutor), or the Minister of the Interior (in the case of information from a file established in order to carry out an activity falling under the authority of the burgomaster).

Article 10

As has already been stated in the notes to article 2, paragraph 1 confers a supervisory and coordinating role on the Dutch central authority. Paragraph 2 concerns the relationship between the chief public prosecutor of the national public prosecutors' office and the International Networks Service of the National Police Services Agency. Article two, paragraph 2 designates the chief public prosecutor to oversee the work of the Dutch central authority.

Article 11

The competent Dutch authorities must have insight into the activities of foreign liaison officers in order to ensure an optimal exchange of information between them. In the interests of effective cooperation, foreign liaison officers are obliged to consult with the Dutch central authority and the competent authorities at times to be arranged at a later date. In addition, they have to inform the Dutch central authority of their activities at regular intervals. When permission is given to maintain direct contacts with the Dutch services referred to in article 7, paragraph 2, the foreign liaison officer in question may be required to submit a written report as well.

Article 12

Paragraph 1

As is also apparent from article 4, paragraph 1, foreign liaison officers must perform their duties within the framework of their powers and in accordance with Dutch law. In view of this, it is important for them to be informed by the central authority, on their appointment to the Netherlands, of any Dutch statutory provisions relevant to that performance. Foreign liaison officers can also put any questions that arise from their work to the central authority.

Paragraph 2

The extent to which and the way in which cooperation is effected with foreign liaison officers partly depends on the treaties in force between the sending state and the Netherlands. Paragraph 2 therefore allows for differentiation in the implementation of this regulation.

Article 13

The Dutch central authority must inform foreign liaison officers of any developments that are relevant to their sending state or the performance of their duties. Examples include amendments to Dutch legislation.

Article 14

Foreign liaison officers are expected to cooperate as far as possible with the Dutch authorities in legal proceedings and any inquiries into investigative activities. This will mainly be the case where information is needed concerning the activities of a foreign liaison officer on Dutch territory. In accordance with article 31, paragraph 2 of the Vienna Convention on diplomatic relations, foreign liaison officers are not of course obliged to appear as witnesses.

Article 15

The obligation to inform the central authority in advance on the provision of information to the media is intended to ensure that Dutch interests are not damaged. Interference with ongoing criminal investigations must be prevented, as well as the damage to relations with other countries.

Article 16

Article 9 of the Vienna Convention on diplomatic relations provides for sanctions to be imposed by the receiving country. If a foreign liaison officer contravenes Dutch laws or regulations, the Netherlands may, in the most extreme case, declare him *persona non grata*. In that event, the sending state will have to recall the officer or terminate his activities. If the sending state refuses or fails to fulfil its obligations within a reasonable time, the Netherlands may refuse to recognise the person concerned as a member of the mission.

The Minister of Justice,
A.H. Korthals

Regeling buitenlandse verbindingsofficieren

Richtlijnen voor buitenlandse verbindingsofficieren in Nederland op het gebied van de politieke en justitiële samenwerking

8 maart 2002/CJ/PK

De Minister van Justitie,
Handelende in overeenstemming met
de Minister van Buitenlandse Zaken;

Besluit:

§ 1. Algemene bepalingen

Artikel 1

1. In deze regeling wordt verstaan onder buitenlandse verbindingsofficier: een in Nederland door een andere staat aangemelde opsporingsambtenaar voor de politieke en justitiële strafrechtelijke samenwerking die zijn werkzaamheden op Nederlands grondgebied uitoefent.

2. Deze regeling laat onverlet de samenwerking tussen buitenlandse verbindingsofficieren en de douane op basis van de bestaande internationale douaneregelingen op het gebied van de wederzijdse bijstand en de communautaire regelingen ter zake.

Artikel 2

1. Als centrale Nederlandse autoriteit, bedoeld in deze regeling, wordt aangewezen de dienst Internationale Netwerken van het Korps landelijke politiediensten.

2. Het gezag ten aanzien van de taakuitvoering van de centrale Nederlandse autoriteit, bedoeld in deze regeling, wordt uitgeoefend door de hoofdofficier van justitie van het landelijk parket.

Artikel 3

De Minister van Buitenlandse Zaken zendt de staat die een buitenlandse verbindingsofficier in Nederland heeft aangemeld, onverwijld een afschrift van deze regeling onder verwijzing naar de verplichtingen die voortvloeien uit artikel 41, eerste lid, van het op 18 april 1961 tot stand gekomen Verdrag van Wenen inzake diplomatiek verkeer (Trb. 1962, 101).

Artikel 4

1. Conform artikel 41, eerste lid, van het Verdrag van Wenen inzake diplomatiek verkeer, vervult een buitenlandse verbindingsofficier zijn taken binnen het raam van zijn bevoegdheden met inachtneming van de bepalingen van de Nederlandse wet- en regelgeving. Daarbij worden, voorzover van toepassing, tevens de voor Nederland en de zendstaat geldende en relevante verdragen in acht genomen.

2. Hij werkt samen met de Nederlandse politie en de overige diensten en bevoegde autoriteiten belast met de opsporing van strafbare feiten, conform de bepalingen van deze regeling en de praktische uitwerking daarvan door de centrale Nederlandse autoriteit.

§ 2. Taakomschrijving

Artikel 5

1. Een buitenlandse verbindingsofficier heeft primair tot taak bijstand te verlenen bij:

- a. de informatie-uitwisseling ten behoeve van de voorkoming en opsporing van strafbare feiten;
- b. het verzoeken tot de uitvoering van rechtshulp in strafzaken;
- c. de informatie-uitwisseling ten behoeve van het voorkomen of tegen gaan van verstoringen van de openbare orde.

2. Onder deze taak wordt begrepen:

- a. het verstrekken van informatie uit de zendstaat aan de Nederlandse politie en justitie en overige opsporingsdiensten, voorzover verenigbaar met de wetten en regelingen van de zendstaat;
 - b. het begeleiden van door de zendstaat bij Nederland ingediende rechtshulpverzoeken en het bemiddelen ter bevordering van de uitvoering ervan (inkomende rechtshulpverzoeken).
3. Onder deze taak wordt mede begrepen:
- a. het in ontvangst nemen en doorgeleiden van Nederlandse informatie aan opsporingsdiensten en -autoriteiten in de zendstaat;
 - b. het begeleiden van Nederlandse

rechtshulpverzoeken aan de zendstaat en het bemiddelen ter bevordering van de uitvoering ervan (uitgaande rechtshulpverzoeken).

4. Is in de zendstaat een Nederlandse verbindingsofficier gestationeerd, dan kunnen de taken, bedoeld in het derde lid, tevens geheel of gedeeltelijk door deze persoon worden uitgeoefend.

§ 3. Taakuitvoering

Artikel 6

1. Een buitenlandse verbindingsofficier onthoudt zich bij zijn taakuitvoering van het zelfstandig verrichten van onderzoeks- en opsporingshandelingen als onder meer bedoeld in het Wetboek van Strafvordering, daaronder begrepen het onderhouden van contacten met burgerinformanten en infiltranten.

2. Indien ten behoeve van de zendstaat in Nederland informatie moet worden ingewonnen of verzameld of een andere opsporingshandeling is vereist, vindt dit slechts plaats na overleg met en onder het gezag van het Nederlandse openbaar ministerie door Nederlandse opsporingsambtenaren. Indien het onderzoek en de omstandigheden dit vereisen, kunnen deze opsporingsambtenaren zo nodig worden bijgestaan door speciaal voor dat doel uit het buitenland overgekomen opsporingsambtenaren, echter nimmer door de buitenlandse verbindingsofficier.

Artikel 7

1. De buitenlandse verbindingsofficier onderhoudt zijn contacten met de Nederlandse politie, overige opsporingsdiensten en justitie door tussenkomst van de centrale Nederlandse autoriteit.

2. Slechts indien hierover afspraken zijn gemaakt met de centrale Nederlandse autoriteit mag de buitenlandse verbindingsofficier directe contacten onderhouden met de Nederlandse diensten, bedoeld in het voorgaande lid.

Artikel 8

De buitenlandse verbindingsofficier kan door tussenkomst van de centrale Nederlandse autoriteit een beroep doen op de officier van justitie van het landelijk parket verantwoordelijk voor internationale samenwerking indien zulks voor zijn taakuitvoering gewenst is, in het bijzonder in geval van gewenste bemiddeling door of afstemming met justitiële autoriteiten.

Artikel 9

1. Wanneer door tussenkomst van de buitenlandse verbindingsofficier gegevens anders dan in het kader van de toepasselijke uitleverings- en rechtshulpverdragen tussen Nederland en de zendstaat worden uitgewisseld, bepaalt de staat waaruit de gegevens afkomstig zijn de voorwaarden waaronder van deze gegevens gebruik mag worden gemaakt.
2. De buitenlandse verbindingsofficier draagt er zorg voor dat de ontvangende staat over deze voorwaarden wordt geïnformeerd.
3. Gebruik van de hiervoor genoemde gegevens in strafzaken is slechts mogelijk indien een daartoe strekkend rechtshulpverzoek, gebaseerd op het toepasselijke rechtshulpverdrag, door de staat waaruit de gegevens afkomstig zijn, is ingewilligd.
4. Informatie uit Nederlandse politieregisters mag in beginsel slechts aan de zendstaat, respectievelijk de buitenlandse verbindingsofficier worden verstrekt door tussenkomst van de centrale Nederlandse autoriteit.
5. Tussen Nederland en de zendstaat kunnen door de daartoe bevoegde autoriteiten nadere afspraken worden gemaakt over de verstrekking en het gebruik van gegevens uit politieregisters.

§ 4. Gezag en toezicht

Artikel 10

1. De centrale Nederlandse autoriteit is belast met het begeleiden van en het zicht houden op de werkzaamheden van de buitenlandse verbindingsofficier in het kader van deze regeling, alsmede met de coördinatie van de daarmee verband houdende informatiestromen van en naar het buitenland.
2. De in lid 1 bedoelde taakuitoefening door de centrale Nederlandse autoriteit geschiedt onder verantwoordelijkheid van het gezag.

Artikel 11

De verbindingsofficier voert in het belang van een goede samenwerking op nader af te spreken tijdstippen overleg met de centrale Nederlandse autoriteit en het bevoegde gezag. Hij informeert daarnaast periodiek de centrale Nederlandse autoriteit over zijn werkzaamheden.

Artikel 12

1. De centrale Nederlandse autoriteit ondersteunt de buitenlandse verbindingsofficier bij zijn taakvervulling en neemt de nodige maatregelen teneinde:
 - a) de buitenlandse verbindingsofficier bij aanvang van zijn tewerkstelling in Nederland te instrueren omtrent de voor zijn taakuitvoering van belang zijnde Nederlandse wettelijke voorschriften, in het bijzonder die op het gebied van gegevensbescherming en bescherming van de persoonlijke levenssfeer;
 - b) gehoor te geven aan zijn verzoeken om raad en hem, indien mogelijk de nodige bijstand te verlenen;
 - c) daar waar mogelijk, oplossingen te vinden voor de problemen die zich bij het verrichten van zijn taken plegen voor te doen.
2. De centrale Nederlandse autoriteit kan met de individuele buitenlandse verbindingsofficier nadere afspraken maken over de uitvoering van de onderhavige regeling.

Artikel 13

De centrale Nederlandse autoriteit houdt de buitenlandse verbindingsofficier op de hoogte van ontwikkelingen die van belang kunnen zijn voor zijn zendstaat of zijn taakuitvoering.

Artikel 14

Ten behoeve van een goede internationale strafrechtelijke samenwerking zal de buitenlandse verbindingsofficier bij gerechtelijke procedures en eventuele onderzoeken naar opsporingsactiviteiten zijn medewerking verlenen aan Nederlandse autoriteiten. Dit laat onverlet de mogelijkheid om op basis van artikel 31 van het Verdrag van Wenen inzake diplomatiek verkeer een beroep te doen op diplomatieke onschendbaarheid.

Artikel 15

Alvorens de buitenlandse verbindingsofficier met betrekking tot zijn taakuitoefening als omschreven in artikel

5 informatie aan de media verstrekt, informeert hij de centrale Nederlandse autoriteit met het oog op de eerbiediging van Nederlandse belangen.

Artikel 16

Bij handelen in strijd met deze regeling kan, als uiterste consequentie, worden besloten tot het nemen van maatregelen, waaronder die als bedoeld in artikel 9 van het Verdrag van Wenen inzake diplomatiek verkeer.

§ 5. Slotbepalingen

Artikel 17

De richtlijn met betrekking tot de stationering van liaison officers in Nederland van 21 maart 1994 wordt ingetrokken.

Artikel 18

Deze regeling treedt in werking met ingang van 1 april 2002.

Artikel 19

Deze regeling wordt aangehaald als: Regeling buitenlandse verbindingsofficieren.

Deze regeling zal (met de toelichting) in de Staatscourant worden geplaatst.

Den Haag, 8 maart 2002.

De Minister van Justitie,
A.H. Korthals.

Toelichting

In Nederland zijn buitenlandse verbindingsofficieren werkzaam met als taak het bevorderen van de strafrechtelijke samenwerking tussen de zendstaat en Nederland. Deze verbindingsofficieren hebben een diplomatieke status en dienen, conform artikel 41, eerste lid, van het Verdrag van Wenen inzake diplomatiek verkeer (Trb. 1962, 101), hun werkzaamheden uit te voeren met inachtneming van de Nederlandse wet- en regelgeving. Ten behoeve van de werkzaamheden van buitenlandse verbindingsofficieren in Nederland is op 21 maart 1994 een richtlijn met betrekking tot de stationering van liaison officers in Nederland vastgesteld. Deze richtlijn is door het Ministerie van Buitenlandse Zaken aan de betrokken ambassades toegezonden en trachtte

het kader aan te geven waarbinnen de in Nederland gestationeerde verbindingsofficieren hun werkzaamheden dienen uit te voeren. Zij was gebaseerd op de Europese richtlijnen voor de uitwisseling van liaison officers, die in 1991 door de Europese politie-ministers in het kader van het TREVI-overleg waren vastgesteld. Tijdens de Parlementaire Enquêtecommissie

Opsporingsmethoden kwam onder meer de rol van de in Nederland gestationeerde buitenlandse verbindingsofficieren aan de orde. De Enquêtecommissie was van oordeel dat de samenwerking tussen de Nederlandse en buitenlandse opsporingsdiensten nadere reglementering behoeft voor wat betreft het gehouden zijn aan Nederlandse regels en rapportage aan Nederlandse instanties. Met het oog hierop werd door het Ministerie van Justitie de werkgroep liaison officers ingesteld die werd belast met het onderzoek naar de noodzakelijkheid en mogelijkheid van aanscherping van de richtlijn uit 1994.

De werkgroep liaison officers concludeerde in mei 1998 dat de bestaande richtlijn ontoereikend en onvolledig was. De richtlijn bleek onder meer niet te zijn aangepast aan nieuwe ontwikkelingen en was niet afdwingbaar. Bovendien bestond onduidelijkheid over de centrale toezichthoudende rol van de directie CRI van het Korps landelijke politiediensten (KLPD) en het landelijk parket enerzijds en de rol van de regiokorpsen (waaronder de kernteams) en het lokaal openbaar ministerie anderzijds. De werkgroep heeft een aantal aanbevelingen geformuleerd, gericht op verbetering van de situatie.

De Minister van Justitie heeft op grond van de conclusies en aanbevelingen van de werkgroep liaison officers aan een nieuwe interdepartementale werkgroep de opdracht gegeven te komen met voorstellen tot nadere regelgeving betreffende het kader waarbinnen buitenlandse verbindingsofficieren in Nederland kunnen optreden. De onderhavige regeling is hiervan het resultaat.

Artikelsgewijs

Artikel 1

In dit artikel wordt het begrip buitenlandse verbindingsofficier gedefi-

nieerd. Uit de definitie volgt dat de onderhavige regeling van toepassing is op in Nederland aangemelde buitenlandse opsporingsambtenaren, maar niet op in Nederland gedetacheerde buitenlandse verbindingsofficieren. Ook is de regeling niet van toepassing op verbindingsofficieren met een andere taak dan de bevordering van strafrechtelijke samenwerking, zoals de douane- of immigratieliasion, voorzover zij zich althans beperken tot de administratiefrechtelijke samenwerking op het gebied van controle en toezicht. Zodra deze verbindingsofficieren werkzaamheden verrichten op het terrein van de strafrechtelijke samenwerking, is onderhavige regeling ook op hen van toepassing. De regeling laat de samenwerking tussen verbindingsofficieren en de douane op basis van bestaande douane- en communautaire regelingen op het gebied van de wederzijdse bijstand onverlet. Voorts vallen Europol-liaisons niet onder het bereik van de definitie. Hoewel buitenlandse Europol-liaisons fysiek in Nederland zijn gestationeerd, zijn zij immers niet in Nederland geaccrediteerd. De Nederlandse autoriteiten hebben geen formeel toezichthoudende functie ten aanzien van hun werkzaamheden. Wel onder de definitie vallen de elders gestationeerde verbindingsofficieren die door een andere staat in Nederland zijn aangemeld, voorzover zij hun werkzaamheden op Nederlands grondgebied uitoefenen. Er zijn ontwikkelingen gaande die het wellicht mogelijk maken dat landen buiten de EU verbindingsofficieren kunnen uitzenden die zowel bij Europol als in Nederland worden aangemeld. Indien dit gebeurt, zal de onderhavige regeling enkel van toepassing zijn op de werkzaamheden van deze verbindingsofficieren op Nederlands grondgebied.

Artikel 2

Eerste lid

De dienst Internationale Netwerken van het Korps landelijke politiediensten (voorheen CRI) wordt aangewezen als centrale Nederlandse autoriteit. Deze autoriteit heeft allereerst een coördinerende rol met betrekking tot de informatiestroom van en naar het buitenland. Een basis hiervoor is neergelegd in artikel 13, lid 7, Besluit Politierregisters, betreffende de versprekking van gegevens uit

Nederlandse politierregisters.

Daarnaast wordt aan deze autoriteit in artikel 10, eerste lid, ook uitdrukkelijk een toezichthoudende rol toegekend.

Tweede lid

Het gezag over het Korps landelijke politiediensten wordt uitgeoefend door het landelijk parket. In het tweede lid wordt daarom de hoofdofficier van justitie van het landelijk parket aangewezen als het gezag ten aanzien van de taakuitvoering van de centrale Nederlandse autoriteit.

Artikel 3

Op grond van artikel 10 van het op 18 april 1961 tot stand gekomen Verdrag van Wenen inzake diplomatiek verkeer (Trb. 1962, 101) dient de ambassadeur van de kandidaat-zendstaat de komst van een buitenlandse verbindingsofficier in Nederland bij het Ministerie van Buitenlandse Zaken aan te melden.

Na ontvangst van de aanmelding zal de Minister van Buitenlandse Zaken de zendstaat onverwijld een afschrift zenden van onderhavige regeling om deze staat te informeren over de regels waaraan de buitenlandse verbindingsofficier in Nederland geacht wordt zich te houden. Aan staten die reeds vóór het van kracht worden van deze regeling een verbindingsofficier in Nederland hebben aangemeld, zal eveneens onverwijld een afschrift daarvan worden gezonden.

In de begeleidende aanbiedingsnota wordt de zendstaat gewezen op de verplichting tot naleving van de regeling. Deze verplichting vloeit voort uit artikel 41, eerste lid, van het Verdrag van Wenen inzake diplomatiek verkeer. Daarin is immers bepaald dat de wetten en regelingen van de ontvangende staat moeten worden geëerbiedigd.

Toezening van de regeling impliceert niet automatisch dat door Nederland toestemming wordt verleend voor de komst van de buitenlandse verbindingsofficier. Alvorens die toestemming wordt verleend, wordt het buitenlandse verzoek tot accreditatie altijd door het Ministerie van Buitenlandse Zaken voor advies voorgelegd aan de dienst Internationale Netwerken van het Korps landelijke politiediensten. Mochten er naar het oordeel van de dienst Internationale Netwerken bezwaren bestaan tegen

accreditatie, dan zal deze dienst het buitenlandse verzoek voorleggen aan het landelijk parket.

Toezending doet evenmin afbreuk aan de mogelijkheid voor Nederland om uiteindelijk op basis van artikel 9 van het Verdrag van Wenen inzake diplomatiek verkeer de zendstaat er op enig later moment van te verwittigen dat de aangemelde buitenlandse verbindingsofficier tot persona non grata is verklaard.

Artikel 4

Eerste lid

In het eerste lid wordt uitdrukkelijk gewezen op de verplichting die voor de buitenlandse verbindingsofficier voortvloeit uit artikel 41, eerste lid, van het Verdrag van Wenen inzake diplomatiek verkeer. Hij wordt daarmee geacht zich mede te houden aan onderhavige regeling. Met de meeste zendstaten heeft Nederland rechtshulpverdragen gesloten. Voorzover van toepassing, dienen deze verdragen uiteraard in acht genomen te worden.

Tweede lid

Het tweede lid bevat voor de buitenlandse verbindingsofficier de verplichting tot samenwerking met de Nederlandse autoriteiten conform de bepalingen van deze regeling en de praktische uitwerking daarvan door de centrale Nederlandse autoriteit. In dit opzicht is duidelijk sprake van een verscherping ten opzichte van de richtlijn uit 1994, omdat die richtlijn slechts bepaalde dat het wenselijk is dat de liaison officers bij de uitoefening van hun taak de gegeven richtlijnen in acht zouden nemen. Onder het begrip overige diensten worden de bijzondere opsporingsdiensten begrepen.

Artikel 5

In dit artikel worden de werkzaamheden omschreven die in de huidige praktijk onder de taak van buitenlandse verbindingsofficieren (kunnen) vallen. Indien tevens in de zendstaat een Nederlandse verbindingsofficier is gestationeerd, kunnen de werkzaamheden genoemd in het derde lid ook geheel of gedeeltelijk door deze Nederlandse verbindingsofficier worden uitgevoerd.

Artikel 6

Eerste lid

Een belangrijke beperking van de bevoegdheden van de buitenlandse verbindingsofficier is dat hij zich dient te onthouden van zelfstandig onderzoek en opsporingshandelingen. Een buitenlandse verbindingsofficier is niet bevoegd tot het zelfstandig onderhouden van contacten met burgerinformanten en infiltranten.

Tweede lid

Uitgangspunt is dat opsporing op Nederlands grondgebied plaatsvindt door Nederlandse opsporingsambtenaren. Niettemin kunnen zich situaties voordoen waarin het wenselijk is een buitenlandse opsporingsambtenaar te belasten met de uitvoering van bepaalde opsporingsbevoegdheden. De Wet bijzondere opsporingsbevoegdheden biedt daarom de mogelijkheid een persoon in de openbare dienst van een vreemde staat te belasten met de uitvoering van een bevel tot observatie, tot infiltratie, tot pseudo-koop of -dienstverlening of tot stelselmatige inwinning van informatie. Daarbij dienen de eisen gesteld in het Samenwerkingsbesluit bijzondere opsporingsbevoegdheden (Stb. 1999, 549) in acht te worden genomen. Onder meer dient betrokkene in eigen land bevoegd te zijn tot het opsporen van strafbare feiten en dient hij zich te hebben verbonden aan de verplichting in Nederland te getuigen ten aanzien van de opsporingshandelingen die hij heeft verricht, indien hij daartoe door de Nederlandse autoriteiten wordt opgeroepen. Buitenlandse verbindingsofficieren zullen niet met de uitvoering van genoemde bevelen kunnen worden belast.

Artikel 7

Eerste lid

Het belang van de tussenkomst van de Nederlandse centrale autoriteit is tweeledig. Enerzijds dient deze autoriteit toezicht uit te oefenen op de activiteiten van de verbindingsofficier. Dit toezicht kan alleen verwezenlijkt worden indien de Nederlandse centrale autoriteit het totaaloverzicht heeft over alle activiteiten van de betreffende verbindingsofficier. Anderzijds heeft de Nederlandse centrale autoriteit een coördinerende taak met betrekking tot de informatiestroom van en naar het buitenland. Vanuit

dit perspectief dient deze autoriteit ook op de hoogte te zijn van de informatie die door de verbindingsofficier met de politieregio's wordt uitgewisseld. Het doel van de informatiecoördinatie is onder meer verbindingen te leggen met in Nederland lopende onderzoeken en andere internationale rechtshulpverzoeken. Voorts kan worden gecontroleerd in hoeverre de door de buitenlandse verbindingsofficier spontaan verstrekte informatie in Nederland te gebruiken is. Hierbij is bijvoorbeeld van belang op welke wijze de informatie is verkregen.

Voor een goede uitvoering van de toezichthoudende en coördinerende taken is het noodzakelijk dat de buitenlandse verbindingsofficieren de dienst Internationale Netwerken onverwijld, dan wel zo spoedig mogelijk informeren. De wijze waarop vervolgens kan worden samengewerkt, zal mede afhangen van eventuele verdragen die tussen de zendstaat en Nederland van kracht zijn.

Tweede lid

In de praktijk variëren de werkzaamheden van een verbindingsofficier van incidentele informatieoverdracht tot intensieve politie samenwerking met een Nederlands opsporingsteam over een langere periode. Gelet op deze variatie, wordt in het tweede lid ruimte geboden voor differentiatie in de begeleiding van en controle op de werkzaamheden van een buitenlandse verbindingsofficier. Zo kunnen bijvoorbeeld voor spoedeisende situaties met de centrale Nederlandse autoriteit schriftelijke afspraken worden gemaakt over de gevallen waarin de buitenlandse verbindingsofficier zich rechtstreeks mag wenden tot de betrokken politiedienst of bevoegde justitiële autoriteit onder voorwaarde dat de centrale Nederlandse autoriteit hierover onverwijld door hem wordt geïnformeerd.

Artikel 8

Het landelijk parket kan door tussenkomst van de centrale Nederlandse autoriteit de buitenlandse verbindingsofficier op diens verzoek met name behulpzaam zijn bij de coördinatie van handelingen die op lokaal niveau door of onder verantwoordelijkheid van het openbaar ministerie ter uitvoering van een rechtshulpverzoek moeten worden verricht.

Krachtens artikel 3 van het Besluit reorganisatie openbaar ministerie en instelling landelijk parket (Stb. 1999, 197) is de officier van justitie bij het landelijk parket overigens zelf belast met de vervolging van:

a. misdrijven die gezien hun ernst of frequentie dan wel het georganiseerd verband waarin deze worden gepleegd een ernstige inbreuk op de rechtsorde maken en voor de bestrijding waarvan een hoge mate van financiële en fiscale deskundigheid noodzakelijk is; b. misdrijven die in nationaal of internationaal verband worden gepleegd en waarvoor vervolging door het landelijk parket, gezien de taakverdeling tussen het landelijk rechteerteam en de regionale politiekorpsen, in aanmerking komt.

Artikel 9

Eerste lid

Voorzover door tussenkomst van de buitenlandse verbindingsofficier gegevens worden uitgewisseld op basis van de toepasselijke uitleverings- en rechtshulpverdragen, gelden voor het gebruik van deze gegevens de regels die in deze verdragen daaromtrent zijn opgenomen. Buiten deze gevallen bepaalt de staat waaruit de gegevens afkomstig zijn de voorwaarden waaronder van deze gegevens gebruik mag worden gemaakt.

Krachtens artikel 13, lid 5, Besluit Politierregisters worden gegevens uit Nederlandse politierregisters altijd verstrekt onder de algemene voorwaarde dat deze slechts zullen worden gebruikt voor het doel waarvoor zij zijn verstrekt. De beheerder van het betreffende register kan in bijzondere gevallen op verzoek van de buitenlandse politieautoriteiten echter toestemmen in het gebruik voor een ander doel voorzover dit noodzakelijk is voor de goede uitvoering van de politietaak in dat land. Door de verstrekker van gegevens uit Nederlandse politierregisters dient uiteraard te worden voldaan aan de voorschriften gesteld bij of krachtens de Wet politierregisters.

Tweede lid

Wanneer door tussenkomst van de buitenlandse verbindingsofficier gegevens anders dan in het kader van de toepasselijke uitleverings- en rechtshulpverdragen tussen Nederland en de zendstaat worden uitgewisseld, is het de taak van de buitenlandse ver-

bindingsofficier om de ontvangende staat te informeren over de voorwaarden die de zendstaat aan het gebruik van deze gegevens heeft gesteld.

Derde lid

Uitgewisselde gegevens mogen slechts als bewijsmateriaal in een strafzaak worden gebruikt met uitdrukkelijke toestemming van de bevoegde justitiële autoriteit van de staat waaruit de gegevens afkomstig zijn. Dit gebruik vergt dan ook een daartoe strekkend rechtshulpverzoek aan deze staat.

Vierde lid

Krachtens artikel 13 lid 7 van het Besluit Politierregisters dient de verstrekking van informatie uit de Nederlandse politierregisters aan het buitenland in beginsel te geschieden door tussenkomst van het Korps landelijke politiediensten. Rechtstreekse verstrekking kan slechts plaatsvinden overeenkomstig afspraken met politieautoriteiten in het buitenland, voorzover met deze afspraken is ingestemd door de Minister van Justitie (indien het gegevens betreft uit een register dat is aangelegd met het oog op de uitvoering van een taak onder het gezag van de officier van justitie) of de Minister van Binnenlandse Zaken (indien het gegevens betreft uit een register dat is aangelegd met het oog op de uitvoering van een taak onder het gezag van de burgemeester).

Artikel 10

Zoals reeds bij de toelichting op artikel 2 is opgemerkt, wordt in het eerste lid aan de centrale Nederlandse autoriteit expliciet een toezichhoudende en coördinerende rol toegekend. Het tweede lid betreft de verhouding tussen de hoofdofficier van justitie van het landelijk parket en de dienst Internationale Netwerken van het Korps landelijke politiediensten. In artikel 2, tweede lid, is de hoofdofficier van justitie van het landelijk parket aangewezen als het gezag ten aanzien van de taakuitvoering van de centrale Nederlandse autoriteit.

Artikel 11

De verantwoordelijke Nederlandse autoriteiten dienen zicht te hebben op de werkzaamheden van de buitenlandse verbindingsofficier. Alleen daardoor kan gegarandeerd worden dat tussen de buitenlandse verbin-

dingsofficier en de Nederlandse autoriteiten een optimale gegevensuitwisseling kan plaatsvinden. In het belang van een goede samenwerking wordt de buitenlandse verbindingsofficier daarom verplicht op nader af te spreken tijdstippen overleg te voeren met de centrale Nederlandse autoriteit en het bevoegde gezag. Daarnaast dient hij de Nederlandse centrale autoriteit periodiek over zijn werkzaamheden te informeren. Bij het verlenen van toestemming tot het onderhouden van directe contacten met de Nederlandse diensten, bedoeld in artikel 7 tweede lid, kan worden verlangd dat in die gevallen tevens schriftelijk verslag wordt uitgebracht.

Artikel 12

Eerste lid

Zoals ook blijkt uit artikel 4, eerste lid, dient een buitenlandse verbindingsofficier zijn taken te vervullen binnen het raam van zijn bevoegdheden met inachtneming van de bepalingen van de Nederlandse wet- en regelgeving. Met het oog daarop is het van belang dat hij bij aanvang van zijn tewerkstelling in Nederland door de centrale Nederlandse autoriteit over de voor zijn taakuitvoering van belang zijnde Nederlandse wettelijke voorschriften wordt geïnformeerd. Ook vragen die tijdens de taakuitoefening rijzen, kunnen door de buitenlandse verbindingsofficier worden voorgelegd aan de centrale Nederlandse autoriteit.

Tweede lid

De mate waarin en de wijze waarop met de buitenlandse verbindingsofficier kan worden samengewerkt, is mede afhankelijk van eventuele verdragen die tussen zendstaat en Nederland van kracht zijn. Het tweede lid biedt daarom de mogelijkheid voor differentiatie bij de uitvoering van onderhavige regeling.

Artikel 13

Voorzover zich ontwikkelingen voordoen die voor de taakuitoefening van de buitenlandse verbindingsofficier of zijn zendstaat van belang zijn, is het de taak van de Nederlandse centrale autoriteit hem hierover te informeren. Te denken valt hier bijvoorbeeld aan wijzigingen in de Nederlandse wet- en regelgeving.

Artikel 14

Van de buitenlandse verbindingsofficier wordt verlangd dat hij bij gerechtelijke procedures en eventuele onderzoeken naar opsporingsactiviteiten, zoveel mogelijk medewerking verleent aan de Nederlandse autoriteiten. Dit is met name van belang indien informatie noodzakelijk is over activiteiten van de buitenlandse verbindingsofficier op Nederlands grondgebied. Uiteraard behoudt de buitenlandse verbindingsofficier – gelet op artikel 31, tweede lid, van het Verdrag van Wenen inzake diplomatiek verkeer – het recht niet als getuige op te treden.

Artikel 15

De verplichting tot het voorafgaand informeren van de centrale Nederlandse autoriteit over de te verstrekken informatie aan de media beoogt te verzekeren dat Nederlandse belangen niet worden geschaad. Zo dient te worden voorkomen dat lopende Nederlandse strafrechtelijke onderzoeken worden doorkruist of dat relaties met andere landen schade oplopen.

Artikel 16

Artikel 9 van het Verdrag van Wenen inzake diplomatiek verkeer voorziet in sancties door de ontvangende staat. Nederland zal, als ontvangende staat, een buitenlandse verbindingsofficier in het uiterste geval na schending van de Nederlandse wet- en regelgeving tot persona non grata kunnen verklaren. In dat geval dient de zendstaat de betrokkene terug te roepen of zijn werkzaamheden bij de zending te beëindigen. Indien de zendstaat weigert of in gebreke blijft binnen een redelijke termijn aan deze verplichting te voldoen, kan Nederland weigeren de betrokkene als lid van de zending te erkennen.

*De Minister van Justitie,
A.H. Korthals.*