

## **Appendix: Coordination protocol**

### **The Safety Investigation Board (*Onderzoeksraad voor Veiligheid / OvV*) – Dutch Public Prosecution Service (*OM*)**

#### **Introduction**

If a criminal investigation by the Public Prosecution Service (*OM*), as well as an investigation by the Safety Investigation Board (*OvV*), is carried out into an incident, complicated situations may arise, because both the *OM* and the *OvV* have far-reaching powers and it is to be expected that the mutual investigations will partly be focused on the same aspects. Consequently, in such cases it is desirable that there is coordination between the *OM* and the *OvV* so as to prevent as much as possible that the progress of one investigation is hindered by the other investigation. The starting point is that the *OvV* and the *OM* each primarily perform their own tasks and that they do not hinder one another in this respect. Where useful and possible, cooperation will take place, whereby *OvV* and *OM* oblige one another as much as possible, in so far as this is not detrimental to major interests of both (either of the) parties. Pursuant to Article 24 of the Safety Investigation Board Decree the *OvV* and the *OM* agreed upon a coordination protocol. The protocol provides for agreements on cooperation and exchange of information and provides the necessary tools for further coordination between *OvV* and *OM* in the cases in which both the *OvV* and the *OM* conduct an investigation into an incident.

#### **Consultation**

If both the *OvV* and the *OM* conduct an investigation into the same incident, the responsible representative of the *OvV* and the public prosecutor concerned will contact one another without delay in order to hold consultations about the organisation of both investigations, in compliance with this protocol. During these consultations agreements will at any rate be made about the contents of the investigative activities to be performed, the planning of these investigative activities in time, the seizure of objects and the arrangement of regular coordinating consultations during both investigations. Each time these agreements will be laid down in writing.

#### **Exchange of information**

##### *Start of the coordination*

For the *OvV* as well as the *OM* applies that not all incidents are investigated. Consequently, in view of the possible coordination it will have to be checked, case by case, whether both organisations are investigating the same complex of facts. The number of criminal investigations taking place under responsibility of the *OM* is considerably larger than the number of incidents investigated by the *OvV*. It is therefore obvious that in principle the *OvV* will check whether the *OM* is also conducting a criminal investigation into an incident to be investigated by the *OvV*. For this purpose the relevant representative of the *OvV* will contact the relevant district public prosecutor's office of the *OM* by telephone. The aforesaid contact will have to be made at the earliest possible stage in order to make optimum coordination possible. A telephone list of the defence counsel roster duties of the district public prosecutor's offices has been attached to this protocol as an appendix.

In view of the independent position of the *OvV* it is not desirable that the *OvV* should always have to contact the *OM* upon starting an investigation. For such an automatism might create

the impression that a criminal investigation – started at a later date – into the same incident has possibly been initiated by the coordination contact of the *OvV* with the *OM* and this in its turn might reduce the (general) willingness to bring incidents to the attention of the *OvV*. For this reason in a concrete case the *OvV* may (initially) choose to refrain from checking whether investigations coincide. Obviously, in such a case it is required that the *OvV* has no reasonable cause to assume that a criminal investigation is being conducted with respect to the incident in question or that there is a concrete intention to do so.

#### *Progress of the investigation*

On request, the *OM* and the *OvV* will inform one another of the investigative activities performed and still to be performed, in so far as this is in the interest of the mutual investigations.

The information exchanged on the progress of the investigations will be used in strict confidence and exclusively for the purpose of the investigation. This information shall not be disclosed or revealed to third parties, including persons to be heard, without prior consent.

#### *Provision of information*

A request for provision of information and the provision of such information will take place in writing. Conditions may be attached to the provision of information in so far as this information results from the interest of the investigation. Both organisations will keep a record of the information provided.

*OvV* and *OM* will appoint representatives who are responsible for dealing with requests for provision of information and for providing it.

#### *Provision of information by the OM to the OvV*

If requested, the investigation service and/or the *OM* will provide the *OvV* with copies of official reports or other data for its investigation free of charge, within the rules applying for this<sup>2</sup>.

With a view to quick processing the identity or function of the person whose statement it concerns or the nature of the documents or data carriers to be provided will have to be indicated in the request as concretely as possible. The *OvV* will use the information obtained in strict confidence and exclusively for the purpose of its investigation and will not disclose or reveal it to third parties, including persons to be heard by the *OvV*, without the prior consent of the *OM*.

#### *Provision of information by the OvV to the OM*

In so far as this is permitted within the Kingdom Act concerning Safety Investigation Board<sup>3</sup>, the *OvV* will provide the *OM* and the police, if requested, with information it has at its disposal, in so far as this information is necessary for the criminal investigation.

If requested, statements of persons made within the scope of an investigation by the *OvV* will be made available to the *OM*, provided that the person concerned has given his/her explicit consent thereto. If requested, medical or private information of persons, which has been laid down within the scope of an investigation by the *OvV* will be made available to the *OM*, provided that the person concerned (or surviving relative of this person) has given his/her explicit consent thereto.

## **Investigative activities**

### *Supervision scene of incident/offence*

The police will see to a proper cordoning off of the scene of the incident, as well as to access for investigators of the *OvV*, who will have to identify themselves as such. At the start of the investigation consultations about the supervision of the scene of the incident/offence will take place between the responsible representative of the *OvV* and the scene-of-offence leader or supervisor of the police.

### *Deployment external authorities or experts*

If and in so far as both organisations have an interest in deploying the same external authority or expert(s), in principle a joint assignment will be given.

Where possible, in view of the available capacity and the interests of the investigation, the police and the *OM* will take the wishes of the *OvV* into account during their investigation work. In this context, this may, for instance, include a request of the *OvV* also to consider aspects that are not (directly) relevant to the criminal investigation in case of a technical research – to be carried out within the scope of the criminal investigation – by the Netherlands Forensic Institute.

### *Destructive testing*

Destructive testing shall not take place unless after the consent of both the *OvV* and the *OM*.

### *Seizure*

If both the *OM* and the *OvV* wish to seize an object, the *OM* will see to the seizure and subsequently the *OvV* will be given the opportunity to investigate the object during the seizure. Release of seized objects shall only take place after consultations between the *OvV* and the *OM*.

In this context it may be noted that pursuant to Article 69 of the Kingdom Act concerning Safety Investigation Board certain matters (including statements, private and medical data of persons made/obtained within the scope of an investigation of the *OvV*) cannot be demanded or seized for inspection for the purpose of the criminal investigation. However, on request, part of the information in question can be submitted for inspection, but only if the person concerned has given his/her explicit consent thereto. Another part (including conversations recorded with a cockpit voice recorder) can only be claimed by the *OM*, if it concerns a criminal investigation into a case of hostage-taking, murder, manslaughter or a criminal offence with terrorist intention.

### *Autopsy*

Pursuant to Article 73 of the Burial and Cremation Act the *OvV*, just as the *OM*, is authorized to (give instructions to) perform an autopsy. For practical reasons the *OM* will seize the mortal remains for this purpose. If in such a situation both organisations consider an autopsy necessary, they will give a joint order to do so. If (initially) only one of the organisations considers an autopsy necessary, the order thereto will be given and the results will be made available to the other organisation.

### *Costs of joint investigation orders*

If *OvV* and *OM* give a joint investigation order, the costs will be borne equally, unless there are reasons to deviate from this. In the latter case the apportionment of costs will be fixed by *OvV* and *OM* prior to the investigation order.

## **Rules on the settlement of disputes**

Disputes with respect to the cooperation/coordination between *OvV* and *OM* within the scope of the mutual investigations into a specific incident shall primarily be solved through consultations between the responsible representative of the *OvV* and the public prosecutor. If the dispute continues, as well as in case of general disputes on the interpretation and implementation of the present protocol, the chairman of the *OvV* and the portfolio-holder of the Board of Procurators General will consult with one another.

## **Entry into force**

This protocol will enter into force on 14 July 2005

## **Evaluation**

One year after the entry into force this protocol will be evaluated and, if required, adjusted.

*Onderzoeksraad voor Veiligheid (OvV), mr. Pieter van Vollenhoven, chairman.*

*Openbaar Ministerie (OM),  
mr. H.N. Brouwer, chairman of the Board of Procurators General*

<sup>2</sup> An official report can be provided by the police after the consent of the leader of the criminal investigation (public prosecutor). The legal basis for provision of copies by an investigation service can be found in Article 14, paragraph 1, under x of the Police Files Decree. Provision of information from criminal files by the *OM* will take place in compliance with the Instructions concerning provision of criminal information for purposes beyond the field of criminal law (Instructions judicial and criminal-procedure information Act, 2004A009, Netherlands Government Gazette 2004, 223).

<sup>3</sup> According to Article 69 of the Kingdom Act concerning Safety Investigation Board specific data carriers can only be demanded or seized for inspection by the *OM* if it concerns a criminal investigation into a case of hostage-taking, murder, manslaughter or terrorist action. The *OvV* will provide such data carriers or the data derived from them exclusively in the situations referred to.

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