Summary

Evaluation of 'Temporary Law on Counterterrorism Administrative measures'

On 1 March 2017, the Temporary Law on Counterterrorism Administrative Measures Act (*Wet bestuurlijke maatregelen terrorismebestrijding*, "the Act") came into effect, the provisions of which aim to prevent terrorist attacks and provide for the following:

- Restriction of freedoms (Section 2): a requirement to report to the police, a ban on being in the vicinity of specific premises or in specific parts of the Netherlands (area ban) or in the vicinity of specific individuals (ban on contact).
- Ban on leaving the country (Section 3): prohibits travel outside the Schengen Area.
- Rejection or revocation of subsidies, etc. (Section 6): enables administrative bodies to reject or revoke subsidies, licences, dispensations and recognitions.

The Act is part of the 'Action Programme for an Integral Approach to Jihadism' from 2014, the provisions of which aim to reduce terrorist threats posed by jihadism. They are imposed by the Minister of Justice and Security and decision-making authority in relation to them has been mandated to the National Coordinator for Security and Counterterrorism (NCTV). The measures are initiated and applied at the local level, this being the level at which person-specific interventions targeting radicalised individuals are deployed. They may be imposed for a period of six months, with the possibility of extension for further periods of six months at a time. These new statutory provisions under these measures are expressly intended to be part of the local, person-specific approach that aims to reduce the jihadist threat.

The Act is temporary and lapse five years after its entry into force. Within no more than three years after its implementation the Minister must submit an evaluation report to both Houses of Parliament. During the Parliamentary debate on the proposed Measures, the Minister expressed the desire 'to structure a process to monitor the operation of the legislation on an ongoing basis'. The Research and Documentation Centre (WODC) has monitored the use of the Measures since they came into effect, between March 2017 and the end of September 2019, at the request of the National Coordinator for Counterterrorism (NCTV). The empirical material complied during this monitoring period serves as the basis for this evaluation report. The purpose of this evaluation is to assess whether the Act contribute to the local, person-specific approach to individuals who pose a terrorist threat. The evaluation is structured along the lines of the following evaluation questions:

1 Which assumptions underlie the Act?
2 In what manner and in which situations is the Act applied in practice?
3 What is the impact of the application of the Act on the local, person-specific approach to the cases concerned?

This evaluation was conducted by holding interviews with key informants at the national as well as local level. At the local level, interviews were held with police and judicial officers and local authority officials in sixteen municipalities, while at the

national level officials from the NCTV, the Public Prosecution Service, the Ministry of Justice and Security and police officers were interviewed. A document content analysis was also carried out.

Application of the Act

Measures of the Act are imposed in seven cases during the period of this evaluation (March 2017 to September 2019). A total of seventeen administrative reports were written, sixteen decisions were made by the Minister and sixteen decisions were issued (including an extension of the measures) for these seven cases. Eleven measures in total were imposed. Table S1 includes a summary overview of several particulars of the provisions imposed under the Act.

Table S1 Summary overview table: particulars of provisions imposed under the Act during the period of evaluation (1 March 2017 to 30 September 2019)

Date	Measures	Term	Measures extended?
Case spring 2017	*Requirement to report* (twice a week)	6 months Stopped after a few days (due to offence)	Not extended
Case spring 2017	*Area ban* (+ electronic monitoring) *Requirement to report* (twice a week)	1 weekend 6 months Stopped after 2 years	Extended once (2 weekends in total) Extended three times (in total, 2-year requirement to report)
Case summer 2017	*Area ban*	6 months Still in force (Dec. 2019)	Extended four times (to date, 2.5-year area ban)
Case autumn 2017	*Ban on leaving the country* *Requirement to report* (three times a week)	6 months 6 months Stopped after 4 months (due to offence)	Not extended Not extended
Case autumn 2017	*Ban on leaving the country* *Requirement to report* (twice a week)	6 months 6 months Stopped after 1 year	Extended once (in total, 1-year ban on leaving the country) Extended once (in total, 1-year area ban)
Case summer 2018	*Ban on contact* *Requirement to report* (twice a week)	6 months 6 months Stopped after 1 year	Extended once (in total, 1-year ban on contact) Extended once (in total, 1-year requirement to report) Intention for 2nd extension notified, Measures not imposed (due to removal of Dutch citizenship)
Case summer 2019	*Requirement to report* (twice a week)	6 months Stopped after 6 months	Not extended (due to removal of Dutch citizenship)

A requirement to report was imposed in almost all the cases. In addition, an area ban was imposed in several instances, a ban on leaving the country in several instances and a ban contact in one instance. The option to revoke subsidies or licences was not used. Most cases were commenced in the first year after the Act came into effect; thereafter, one new case was commenced each year. After the first year, the provisions were mainly used for the purpose of extending existing measures. The measures were extended in four cases, several times in certain instances. The measures were imposed only in a few cases during the period of this evaluation. While the Act is considered dozens of times during the local case consultations, in most instances it was decided to opt for a different intervention. In these cases there was often too little information to properly substantiate the Act (i.e. not necessary for national security) and alternatives were mostly available. The alternatives consisted of criminal penalties as well as care-related interventions. The Act was found to be chiefly used in situations where no other means are available for monitoring a person: there is no possibility of criminal-law probation supervision, or such possibilities have been exhausted, and other government organisations have also been unable to make contact with the individual. The lack of supervision and contact is the main reason for applying the Act. This situation also arises where persons convicted (for a criminal offence) opt to serve their entire sentences in prison, including the suspended part of the sentence, as a result of which they are released without probation supervision after serving their sentence. The Act is almost always considered as an option in these situations.

In practice, application of the Act makes it possible to restrict the freedom of movement of people for whom no criminal penalties are available, one of the central assumptions underpinning the Act. The correctness of this central assumption needs to be qualified in three respects. Firstly, the number of people restrained in their freedom of movement is small. Secondly, the restriction of freedoms is only imposed where care-related measures can not be applied. When applying the person-specific approach, local case consultations supplement the imposition of criminal penalties with a preference for interventions related to professional care and assistance. This may help to explain why the Measures have been used so sparingly.
Thirdly, it was found that in practice the Act is used mainly at the end of the criminal process, when people are released and there is no *further* provision for supervision under criminal law. Legislative history shows that the legislator did not really envisage this specific situation, however. While this situation is not excluded by the legislator, the debate in parliament on the Act chiefly considered cases where criminal law could not *yet* be applied, because there were insufficient grounds *as yet* for criminal prosecution, for example.

In order to assess whether the restriction on freedom of movement also enables the authorities to monitor and supervise people's behaviour, resulting in a more effective person-specific approach (the other general assumptions), it is necessary to examine how the Act is implemented in practice and the consequences for the cases concerned. Below, this is described and compared for each measure in the case of the assumptions underpinning the provisions.

Requirement to report: keeping track

In six cases a requirement to report was imposed for six months, and in three cases was also extended, twice for a period of one year and once for a period of two years. The requirement to report is generally complied with, and it is clear that reporting allows the authorities to keep track of the persons reporting a few times a week. This evaluation also reveals that conversations with persons reporting are generally difficult, and become more cursory the longer the period of the reporting requirement. Police officers responsible for registering attendance at the local police station do not experience building any kind of relationship with the person reporting. Nor do they feel the requirement to report has given them insight into the activities, conduct and religious practice and beliefs of the person reporting.

The legislator assumed that the requirement to report would result in the authorities having contact with the person concerned at regular times during the week, enabling them to keep tabs on that person. In this respect, the assumption corresponds to real-life practice. It was also assumed that the contact with the person reporting would allow a relationship to be built with him or her, that the process of deradicalisation would be facilitated and that an assessment could be made of the risks and threat posed by that person. These assumptions by the legislator regarding deradicalisation, building a relationship and risk and threat assessments were found to be incorrect.

The Act was also accompanied by the assumption that the requirement to report would enable compliance with other Measures imposed to be verified. In three cases the requirement to report was imposed in combination with another measure (an area ban, a ban on contact or a ban on leaving the country). It can be concluded from the findings of these cases that the requirement to report has not facilitated effective verification of compliance with the other measures. This assumption therefore does not tally with actual practice.

Area ban: removing geographic threat

Several times, the Act was considered in response to the threat local authorities deemed an individual posed to a neighbourhood, district, building or facility. In two cases a measure was actually imposed, and in both cases the area ban was extended. In one case, the area ban was backed by electronic tagging, with the person concerned being arrested when they breached the area ban and placed in pre-trial detention for the duration of the event to which the geographic threat related. This removed the geographic threat for the duration of the event. In the other case, the person concerned complied with the area ban, and was thereby prevented to a certain degree (i.e. physically) from spreading radical jihadist ideology.

The assumption underlying this measure was that an area ban ensures a person is excluded from a designated area, so that they are prevented from committing a terrorist attack or engaging in preparatory activities with that aim. In the present cases, the persons concerned were indeed excluded from the designated area from the moment the area ban was imposed and in that sense were prevented from carrying out a terrorist attack at that location or prevented from spreading radical Islamic ideology.

On extension of this measure, the presumed effect of the area ban was called into question by various government officials concerned in both cases. They highlighted the potential for displacement effects (to another area or to online platforms) and the possibility that an extended area ban would be counterproductive.

Ban on contact: preventing contact with fellow jihadists

In several cases, a ban on contact under the Act was considered in an attempt to prise people away from a jihadist network. In one case, a ban on contact was imposed for that reason and extended up to one year. As far as is known, no physical meetings took place with the persons to whom the ban on contact applied during the period of the ban. However, enforcement of a ban on contact cannot prevent online contact being maintained and plans being made online. The possibilities afforded by the internet make it very difficult to enforce a ban on contact. In addition, there may be shifts to individuals from other jihadist networks and to other groupings, which can be facilitated by the internet.

The assumption underlying this measure was that a ban on contact results in a person no longer having contact with (other) radicalised individuals to whom the ban applies, preventing an individual from becoming further involved in jihadist networks and from disseminating radical ideology, and from being recruited or themselves recruiting for the jihadist cause. Although, in the case concerned, the ban on contact appears to have prevented physical meetings from taking place, the legislator's assumption regarding the ban on contact is incorrect, given the countless possibilities offered by the internet and the existence of multiple groupings and jihadist networks.

Ban on leaving the country: preventing travel

The ban on leaving the country was regularly considered in the initial period for individuals who were suspected of planning to travel to Syria for the purpose of joining IS. While the ban was applied in two cases, passport seizure was usually the preferred route since it involves a less stringent test and was considered a less drastic measure. In the cases where the ban on leaving the country provided for under the Act was imposed, the individuals concerned did not leave the country during the period of the ban, as far as is known. It cannot be ascertained from this evaluation whether this is because the measure had a deterrent effect, as the legislator assumed would be the case. It is certainly difficult to enforce the ban on leaving the country, due to the real risk that individuals subject to a ban on leaving the country will go unnoticed at the Schengen area's border. This applies in particular to individuals with dual nationality, who cannot be stripped of their second passport.

The social context has altered considerably since the Measures came into effect due to the changing circumstances in Syria, as a result of which the number of people travelling to Syria has declined to zero. Travel to Syria has been replaced by the return of Syria volunteers and the ban on leaving the country has become less topical.

Rejection or revocation of Decisions

As far as is known, the authority to reject or revoke Decisions, such as a subsidy, licence, dispensation or recognition, was not used in the period of this evaluation. The measures have not resulted in the prevention or cessation of possible inadvertent government support for terrorist activities.

In conclusion

The Act was only applied in a small number of cases in the first two and a half years after coming into effect. This sparing use of the Act is not in itself any reason to question their added value, since the legislator did not expect the Act would be used on a large scale and that they would be applied to only a few individuals. It is important, nonetheless, to evaluate the contribution of the Act that were applied to the local, person-specific approach in these cases. Based on the findings of this evaluation, the following summary conclusions may be drawn. The Act has enabled the authorities to monitor the movements and activities of a small number of individuals in situations where no other means were available. The requirement to report allows the authorities to keep tabs on individuals to a certain degree, so that supervision can be exercised. The Act has additionally prevented an individual from entering or being present in a designated area in a number of cases, thereby removing a (perceived) geographic threat. As such, the Act has made a contribution to the local, person-specific approach.

However, the Act has not contributed to a process of deradicalisation, nor has the Act enabled better contact or a better relationship to be established with individuals. Is has, furthermore, not contributed towards enhancing knowledge about behaviour, ideas and religious practice and beliefs of individuals. The Act has also not enabled a good assessment to be made of the risks and threat posed by an individual. Moreover, it is unlikely that the Act prevent individuals from having further contact with other radicalised individuals, given the possibilities the internet provides for establishing contact.

The expectations for the effect of the Act has therefore largely not been realised. In practice, they are essentially a simple monitoring and surveillance tool. It is important to note that the Act, where applied, place considerable demands in terms of time spent and time pressure on the officials involved in decision-making and implementation, both at the national level for the NCTV and the local level in the case of partners in case consultations. A high workload precedes the imposition of the measures, while their added value for the person-specific approach is limited. The Act is only used where the authorities have exhausted other means, in an attempt to keep tabs, to some degree, on an individual and a grip on a situation that is considered threatening. While criminal law is generally considered as the *ultimum remedium*, administrative law appears to fulfil this function here. In practice, the Act mainly act as a 'safety net' at the end of a criminal procedural process, where criminal law no longer provides a framework for supervising convicted jihadist who are released from prison. Broadly speaking, this involves two situations.

In the first situation, the criminal court has not attached any special conditions to the conditional release or the suspension of pre-trial detention. This means that an individual is released without measures, such as a requirement to report to a probation officer, being imposed. The Minister can then impose one or more restrictions

of freedom, using provisions that are available under administrative law. Applying the Act in this way is questionable from a constitutional perspective, since it can be interpreted as the authorities interfering with the court's decision. Furthermore, the legislator did not intend the Measures to be used in this manner.
In the second situation, the criminal court has attached special conditions to the release, but convicted persons opt to serve the conditional part of their sentence also in prison. This allows them to avoid lengthy probation (5 years) and means they are entirely free from interference from the authorities after serving their prison sentence. The tendency highlighted by interviewees that convicted jihadists choose to spend longer in jail so they can later be released without any interference or concern by the authorities can be seen as an unintended consequence of the recent extension of probation (as discussed in chapter 6 of this report). One consequence of this tendency is that convicted persons are released without probation supervision outside the prison gates, against the advice of the criminal court. In situations such as this, application of the Act is treated as a standard option: administrative law then plugs the gap, as it were, that has arisen in criminal supervision. This creates a somewhat artificial construction using provisions under administrative law to allow tabs to be kept on released individuals without any further involvement by the Probation Service. While it may be understandable for an alternative to be sought, the Act is not intended to fill this gap in criminal supervision, and the legislator in any event did not envisage this situation when the Act was introduced. This is even more true now it is clear that, in practice, the Act is used mainly as a surveillance tool, and otherwise have little added value for the local, person-specific approach.