

### **3 PRIVACY AND SECURITY DISCOURSES IN SELECTED DUTCH POLICY DOCUMENTS**

#### **3.1 INTRODUCTION**

The framing of security and privacy by media and politicians in the Netherlands has been highly influenced by various critical events. In the aftermath of 9/11 and the Theo van Gogh assassination for instance, strong statements have been made about (the balance between) security and privacy in political debates and media. In addition, some chains of events – such as several privacy violations by commercial websites – have had a profound impact on the security and privacy debates. In this document these (chains of) events and the subsequent security and privacy debates are described and reflected upon. For each critical period in time, the key metaphors, story lines (i.e. lines of reasoning), discourse coalitions (i.e. actors who share a certain opinion) and institutionalization (i.e. translation of opinions into e.g. rules and practices) are set out (see section 14.4). First however, the tables used for empirical data collection, the key actors involved in the security and privacy debate and the public attention to these notions are presented (respectively section 14.1 to 3). This, in order to provide an overview and sketch the context of the discourses. The document will conclude with a general reflection upon the discourse and hypotheses which provide input for the survey of PRISMS' Work Package 8 (section 14.5) and an overview of the literature and documents studied (section 14.6).

##### ***3.1.1 Methodology***

For each critical event, leading newspaper articles, parliamentary and policy documents have been studied. Subsequently, (a) frequently used terms, (b) key storylines (lines of reasoning) and (c) all types of actions taken upon the debate (institutionalization) have been collected and structured within tables. In choosing to extract these three aspects from the discourses, we followed the discourse analysis methodology of Hajer<sup>127</sup>. By studying these three aspects the precise framing of the security and privacy concepts, the argumentation used and the extent to which the discourses have had an impact in terms of e.g. new rules, policies and organisations will be revealed. Hajer uses a rather broad definition of the term 'insitutionalisation' as he not only understands the drafting of new rules and establishing of new organisations as 'institutionalisation', but also includes new policies and other actions taken upon specific debates<sup>128</sup>. For a more elaborate description of the methodology, see chapter 13 of this report.

---

<sup>127</sup> E.g. Hajer, 2005, 2006a, 2006b.

<sup>128</sup> See for example Hajer, 2006b, p. 70.

### 3.2 KEY DISCOURSES

The key discourses identified are, in chronological order: the 9/11 terrorist attacks; the Theo van Gogh assassination in (2004); Critical reports of key Dutch public institutions (2006-2008); and Security meets privacy (2009 to date). First findings are presented in the four tables below.

9/11<sup>129</sup>

Terms	Key storylines	Institutionalization
<ul style="list-style-type: none"> <li>• Counterterrorism</li> <li>• Terrorist attack</li> <li>• Attack on 'the Western states'</li> <li>• Attack on democratic constitutional state</li> <li>• Solidarity with US</li> <li>• Fight between terrorism and democracy</li> <li>• New terrorism, new war modes</li> <li>• The start of a whole series of terrorist attacks</li> <li>• Culture clash</li> <li>• Anthrax, biological weapons</li> <li>• Radicalization</li> <li>• Liberation 1945 by US</li> </ul>	<ul style="list-style-type: none"> <li>• Security</li> <li>• The attack on the US is an attack on all western states</li> <li>• Netherlands should express their solidarity with the US and support them in their fight against terrorism. The US and other allies have liberated the Netherlands in 1945</li> <li>• The policy should exist of international cooperation, and the key goal is to protect democracy in solidarity with US</li> <li>• The new type of terrorism is characterized by extreme violent behavior, which aims at making as much victims as possible while using modern technologies.</li> <li>• The terrorist attacks in the US are in fact a direct attack on 'Western Democracies' and the democratic rights.</li> <li>• Europe should take all efforts and use all instruments to find the people responsible for these attacks</li> <li>• The term war in Article 5 NATO Treaty should be interpreted in a broad sense and capture war of terror</li> <li>• The New York attack is just the beginning of a series of attacks and the Netherlands could also be target.</li> <li>• Privacy</li> </ul>	<ul style="list-style-type: none"> <li>• National Coordinator for Counterterrorism and Security</li> <li>• Ministry of Security and Justice</li> <li>• CT Infobox</li> <li>• Expansion of intelligence services</li> <li>• Quick response team</li> <li>• 'Dreigingsbeeld Terrorisme Nederland'</li> <li>• Harmonization visa policy</li> <li>• Increased protection vital infrastructures of government and industries</li> <li>• Increased border control</li> <li>• Enforced surveillance airports</li> <li>• Expansion intelligence and analysis capacity terrorism</li> <li>• Development of biometric identification technologies</li> <li>• Expansion capacity bodyguards</li> <li>• More capabilities to analyse international telephone conversations</li> </ul>

<sup>129</sup> The tables in this section of the report are based on the analysis of several parliamentary documents and news reports. For this table the following documents have been studied: TK, 2001-2002, 27925, nr.5, TK, 2001-2002, 27925, nr.6, TK, 2001-2002, 27925, nr.10, TK, 2001-2002, 27925, nr.11, TK, 2001-2002, 27925, nr.19 and TK, 2001-2002, 27925, nr.26. For a complete list of documents studies see paragraph 6.

## PRISMS Deliverable 3.1

Terms	Key storylines	Institutionalization
<ul style="list-style-type: none"> <li>allies</li> <li>Sacrificing privacy for safety</li> <li>Privacy is over-protected</li> <li>The privacy and security dilemma (trade off concept)</li> </ul>	<ul style="list-style-type: none"> <li>D66 (social-democrat party) in 9/11 debate: "We find it important that all passengers will be thoroughly examined, as this increases security. The sacrifice we all have to make will be increased queue times and possibly we also have to take privacy infringements for granted."</li> <li>CDA (Christian-democrat party) in 9/11 debate: "The CDA already stated that the freedom of the individual [red: e.g. privacy] cannot be at the expense of security of the society. This starting point – according to us - also concerns internet, financial investigations, body searches and the telephone taps."</li> <li>SGP (ultra conservative Christian party) in 9/11 debate: "The question is whether current legislation sufficiently covers new technological possibilities and whether we have not over-protected privacy"</li> <li>GroenLinks (the greens) in 9/11 debate: "Measures have to be taken. We also realize that this [measures] can have consequences for privacy and the balance between security and privacy. Also my party of course is willing to reorient on this"</li> </ul>	<ul style="list-style-type: none"> <li>Expansion satellite interception capacity</li> <li>Increased inspection of legislation concerning identification, financial services and exceptional transactions</li> <li>Alarmeringssysteem Terrorismebestrijding (ATb) (Alert System Anti-Terrorism)</li> <li>De Wet terroristische misdrijven (terrorist crimes law)</li> <li>De Wet afgeschermd getuigen (witness protections law)</li> <li>Wet ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven (law extending police powers)</li> <li>Wetsvoorstel bestuurlijke maatregelen nationale veiligheid (legislative proposal: administrative measures for national security)</li> <li>Expansion legislation on telephone taps</li> </ul>

### Theo van Gogh assassination, 2004

Terms	Key storylines	Institutionalization
<ul style="list-style-type: none"> <li>Jihad in the Oosterpark</li> <li>Terrorist attack</li> <li>The Netherlands at war</li> <li>Radicalisation</li> <li>Fundamentalism</li> <li>Muslim terrorism</li> <li>Radical mosques</li> <li>Breeding grounds for</li> </ul>	<ul style="list-style-type: none"> <li>VVD (conservative-liberal party): "The fight against terrorism is a fight for the preservation of democracy and human rights. The VVD misses the sense of urgency in the measures taken by the Cabinet in the wake of 9/11. Not only questions the VVD the progress being made but also the effectiveness of the measures to prevent a terrorist attack. The by the cabinet announced measures are inevitable and necessary. [...] The measures of preventative body search are not extensive enough. [...] at the airport this should be a permanent measure [and not limited to</li> </ul>	<ul style="list-style-type: none"> <li>NCTb, Joustra</li> <li>Enforced control of specific persons</li> <li>Evaluation of the security organization</li> <li>Alerting system</li> <li>Contra terrorisme info box, cooperation between AIVD, Police, OK, IND and MIVD</li> <li>New anti-terrorism legislation</li> <li>Etc.</li> </ul>

## PRISMS Deliverable 3.1

Terms	Key storylines	Institutionalization
<ul style="list-style-type: none"> <li>terrorism</li> <li>Better safe than sorry</li> <li>Mohammed B.</li> <li>Hirshi Ali</li> <li>Submission</li> <li>Fear and confusion</li> <li>Freedom of Speech</li> <li>Body guards</li> <li>Radical Imams</li> <li>Muslims</li> <li>Burka</li> </ul>	<ul style="list-style-type: none"> <li>arriving and departing people]. [...] The implementation of measures concerning the financing of terrorism is much too slow.”</li> <li>D66 (social-democrat party): “D66 is glad to notice that top politicians finally seem to feel a sense of urgency as regards the threat of a terrorist attack in the Netherlands. [...] A clear commando structure is however missing. [...] d66 thinks it to be a good idea to intensively track and trace people who are preparing terrorist attacks. D66 awaits the expansion of criminal law, but expects this to be within the constitutional framework. D66 takes remarks of the CBP seriously. Is disappointed that project Vitaal has not been delivered yet.</li> <li>CDA (Christian-democrat party): “We should act now. Which means that we should not be too occupied with and concerned about legal [Privacy] issues. The right to privacy is subordinate to the security of society. [Measures] concern camera surveillance, a longer retention period of video material, [...]”</li> <li>PvdA (labour party): “The constitutional state nor the protection of freedom of citizens [Privacy] is in conflict with the enforcement of police and the judiciary when this enforcement is needed. The constitutional state is a safe state in which government ensures the protection [security] of the citizen. [...]”</li> <li>Groenlinks (the greens): “Measures should be taken to deal with the terrorist threats effectively. However shocked by [...] the terminology [Netherlands is at war] and concerned about the expansion of powers [security] and privacy infringements. Afraid this will lead to stigmatizing groups of people”</li> <li>SGP (ultra-conservative Christian party): citing Scheffer: “ the underestimation of terrorism in name of the Islam is a greater threat to an open society than limitations to privacy.”</li> </ul>	

Critical reports of key Dutch public institutions, 2006-2008

Terms	Key storylines	Institutionalization
<ul style="list-style-type: none"> <li>• No new security metaphors (same as after 9/11 Van Gogh assassination, e.g. terrorism, fundamentalism)</li> <li>• Internet and privacy</li> <li>• Data protection</li> </ul>	<ul style="list-style-type: none"> <li>• GroenLinks (the greens): '[Minister] do you know the research of Privacy International and Electronic Privacy Information Center, which shows that in the Netherlands privacy is less protected than in other countries? Do you share the opinion of the researchers that in the Netherlands the privacy protection systematically fails? [...]'</li> <li>• Minister Hirsch Ballin, 17 November 2006 "The in the research mentioned (Dutch) competences, such as telephone and internet taps and the exchange of personal data, are compliant with the EVRM, European case law and article 10 of the constitution.[...] These competences are necessary in a democratic society. The competences aim to contribute to the national security, which complies with the in article8, clause 2 of the EVRM mentioned goal criterion. [...] In other countries, such as Germany and Belgium, elements of legislation have also been modified because of counter terrorism measures.[...] I do not see any reason to take measures [to strengthen privacy]."</li> <li>• D66 (social-democrat party): About research of Rathenau Institute: "[Minister], do you agree that CBP (the Dutch Data Protection Authority) should have more possibilities to sanction in case of privacy infringements? [...] Do you agree with the statement of Rathenau that the whole of security measures fails to be discussed in a public debate? Do you share the concerns and agree that it is time for a fundamental debate about the emerging technologies and privacy[...]?"</li> <li>• Minister Hirsch Ballin, 31 May, 2007: "There are different views as regards the question whether the CBP has sufficient or insufficient possibilities for sanctioning. [...] The first evaluation of the WBP (Dutch data protection law) is currently being conducted.[...] The society is confronted with increased digitalization and internationalization. [...] There is [...] a reason to the question whether and how the privacy policy needs a new impulse." [turning point in debate]</li> <li>• Proposal D66 (social-democrat party), 11 June 2008 D66 asks the</li> </ul>	<ul style="list-style-type: none"> <li>• Commission Brouwer Korf established</li> </ul>

## PRISMS Deliverable 3.1

Terms	Key storylines	Institutionalization
	<ul style="list-style-type: none"> <li>government to develop an integral vision on privacy in the 21<sup>st</sup> century</li> <li>Proposal PvdA (labour party), 24 November, 2008: “[...] finding that many commercial websites still collect personal data of children without verifying whether the children have the approval [of their parents]. [...] requests the government to conduct research on the bottlenecks of the CBP directives and to examine whether it would be possible to develop Dutch legislation conform the American COPPA (Children’s Online Privacy Protection Act)”</li> </ul>	

### *Security meets privacy, 2009-present*

Terms	Key storylines	Institutionalization
<ul style="list-style-type: none"> <li>Cybersecurity</li> <li>Wikileaks</li> <li>Cyber war</li> <li>Cybercrime</li> <li>Skimming</li> <li>Internet fraud</li> <li>Veilig Internetten</li> <li>Dorifelvirus</li> <li>Security and privacy mentioned as matching values instead of rival values</li> <li>Registrations</li> <li>Social network sites</li> <li>Facebook</li> <li>LinkedIn</li> <li>Deep packet inspection</li> <li>Privacy, children and the Internet</li> </ul>	<ul style="list-style-type: none"> <li>Parliamentary questions SP (socialist party), 27 August 2010 “Are you acquainted with the news report on the exponential growth of cybercrime in the Netherlands? How many incidents of cybercrime are there on a yearly basis? [...]”</li> <li>Answer minister Hirsch Ballin, 7 October 2010 “The news item [...] is based on a chapter of the high tech crime report “Overall beeld aandachtsgebieden” of the department National Investigations. In addition to the observation in this report that over the past few years an exponential growth of cybercrime and high tech crime can be discerned, remarks have been made that these observations have been based on the statistics available on sub aspects of cybercrime”</li> <li>Parliamentary questions, PvdA (labour party), 27 October, 2010 “Have you seen the Nieuwsuur TV programme on cybercrime? Do you agree with the interviewees, among which a public prosecutor specialised in cybercrime, that the powers of the police and justice department should be extended as regards cybercrime, more specifically the possibility to “re-hack”, irrespective of the location of the computer?”</li> <li>Parliamentary questions VVD, 7 January 2011 “Have you read the article “Dutch companies target of cyberattacks”? Are you aware of the fact that the Netherlands is among the countries with the most ICT security</li> </ul>	<ul style="list-style-type: none"> <li>national cyber security strategy</li> <li>the Cyber Security Board (Cyber Security Raad)</li> <li>Information Point Cybercrime,</li> <li>Directive on baseline information security for the national government</li> <li>the National Cyber Security Centrum (NCS)</li> <li>Cookie legislation</li> <li>Revised telecommunication legislation</li> <li>Proposed revision of the Dutch data protection law</li> </ul>

## PRISMS Deliverable 3.1

Terms	Key storylines	Institutionalization
<ul style="list-style-type: none"> <li>Privacy and data claims by policy and public prosecutor</li> </ul>	<ul style="list-style-type: none"> <li>incidents within the European Union and that Dutch companies are often victims?"</li> <li>Parliamentary questions (PVV)"Are you aware of the news report "Browser developers release new version after Diginotar failure"? What are the consequences for the use of Digid [...]?"</li> <li>Parliamentary questions (PVDA), 11 August 2011 "Are you aware of the fact that Facebook – through the special Facebook application for smartphones – automatically synchronizes the contact persons form telephone lists and friends and that consequently telephone numbers of Facebook friends automatically appear on someone's Facebook page?"</li> <li>Answer Minister Opstelten: "[...] According to Facebook only the user him/herself has access to the list of imported contacts and this information is used by Facebook to make suggestions for new friends to the users and others. Via <a href="http://www.facebook.com">www.facebook.com</a> a user can delete the imported contact persons [...]. The CBP is an independent supervisor and can in case of data protection law violation enforce the law. It is not my duty to decide in an individual case whether the requirements of the WBP (Dutch data protection law) are being met"</li> <li>Parliamentary questions D66 (social-democrat party), 17 August, 2011"Are you aware of the article "Companies neglect privacy legislation? Do you share the observation being set out in this article, that companies should provide [users] access [to personal data] but that they rarely do so?"</li> <li>Parliamentary questions, D66 (social-democrat party), 4 October 2011 "Did you read the article "Call for investigation use of cookies by Facebook"? What is your opinion on the collecting of privacy-sensitive information by Facebook by using undeletable cookies?"</li> <li>Answer Minister Verhagen "[...] the CBP decides in individual cases whether the Wbp (Dutch data protection law) is violated."</li> <li>Proposal Elissen en Gesthuizen "[...] requests the government in case of the development of all new government ICTs to apply privacy by design</li> </ul>	

## PRISMS Deliverable 3.1

Terms	Key storylines	Institutionalization
	<p>and safety by design so that new ICT systems are more secure and better equipped against abuse and only then contain privacy sensitive data if this is strictly necessary”</p> <ul style="list-style-type: none"> <li>• Proposal Gesthuizen and Verhoven, 27 October 2011 “finding all recent problems concerning <u>privacy, security and the protection of citizens online</u>, makes clear that the Netherlands should take necessary steps as regards ICT security[...] requests the government to inform the Parliament in the first quarter of 2012 about her vision and measures in these areas” [privacy and security mentioned as matching instead of rival values]</li> <li>• Proposal Peters, 20 November 2011 “[...] requests the government to advocate sanctions against Iran and Syria as regards technologies which can be used to violate privacy and freedom of speech.”</li> <li>• Parliamentary questions Groenlinks, 17 November 2011 “Are you acquainted with the news reports concerning the ruling of the court of the American state Virginia that private data of three twitter users can be used in the Wikileaks investigation?[...] To what extend does the cyber security strategy pay attention to the protection of the legal status and privacy of users?”</li> </ul>	



### 3.3 KEY ACTORS AND WORD COMBINATIONS

In the Netherlands, several key actors have been involved in the security and privacy discourse. The debates on these issues were most outspoken in the aftermath of critical events (e.g. 9/11 and Theo van Gogh assassination) in the media (e.g. opinion pages) and in parliamentary debates. It seems that through these platforms (both media and parliament) the tension between security and privacy became most clear and that here the two concepts were attributed meaning. The framing of security and privacy in the media and politics resulted in specific policies of various ministries which applied similar understandings of the notions (i.e. reproduction). In the Netherlands, the data protection authority CBP played a limited role in the discourse. The reason for this may be the relatively limited independence enjoyed by the CBP compared to similar authorities in other EU countries, or just a desire to preserve its independent position by not engaging in public debate. The first supposition could be supported by the fact that the CBP is funded by the Ministry of the Interior and one of the key tasks of the CBP is to support ministries in policymaking and drafting of legislation (for a more elaborate explanation of their tasks, see [www.cbweb.nl](http://www.cbweb.nl)). Since the publication of the report of the Commission 'Security and Private Sphere', the limited independence of the CBP has been a subject for discussion. In any case, from the Dutch documents studied the following actor network picture emerges providing an overview of key actors involved in the Dutch privacy-security discourse:

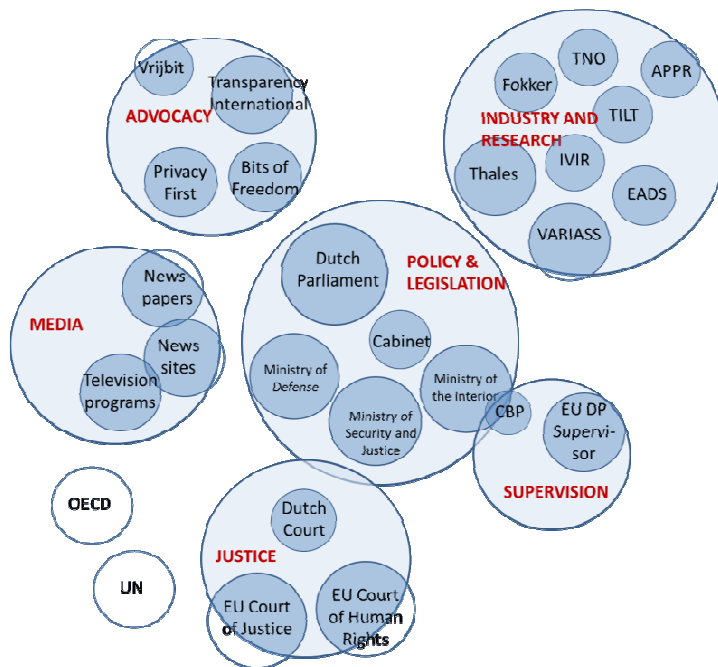


Figure 1: Key actors involved in the Dutch privacy-security discourse

### 3.4 PUBLIC INTEREST

The extent to which citizens have been occupied with the subjects of security and privacy (i.e. the public attention) can be inferred from the frequency with which citizens have searched for information about the subject on the Internet. When citizens are concerned about a particular issue they – more often than not – will try to find online more information about that issue (e.g. in case of a certain disease, but also a threat or scandal). As the large majority of users

use Google as their primary search engine<sup>130</sup>, statistics about the frequency with which users searched for specific information through the Google search engine can provide some indication about the extent to which subjects were important to users. The following tables show the frequency of specific Internet searches over the past seven years.

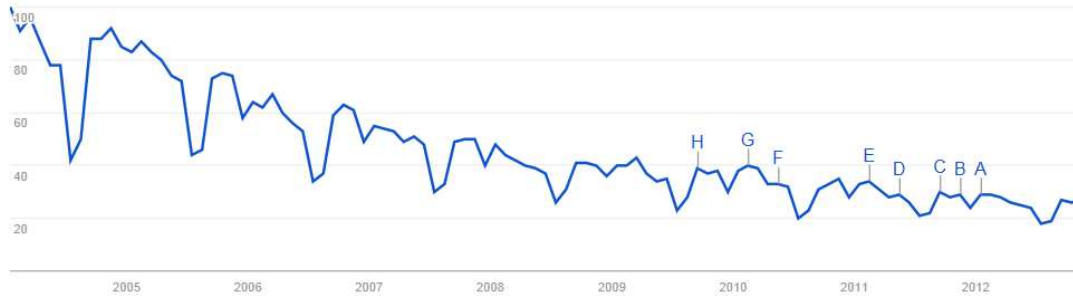


Figure 2, The frequency of the term 'veiligheid' (security) entered by Dutch users into the Google search engine (2005-present).

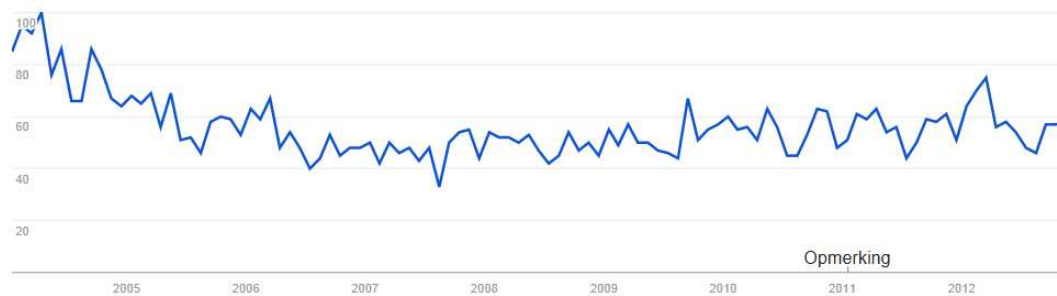


Figure 3: The frequency of the term 'privacy' entered by Dutch users into the Google search engine (2005-present)

As the two tables above indicate, the interest in the 'security' subject among users seem to have declined during the past seven years, whilst the interest in the 'privacy' subject among users seem to have declined from 2005 to 2008 and then slightly increased. This seems to be consistent with the extent to which these subjects have received attention in the Dutch parliament.

When looking at searches on both the terms 'privacy' and 'security' in the table below, it seems that whereas up till 2008 this combination of words was not searched for, since 2008 users increasingly entered the word combination into the Google search engine. This may substantiate our research finding yielding from the parliamentary debates, that over the years these terms have been increasingly understood as matching instead of contradictory notions; another possible explanation is that over the years more security issues have had privacy connotations in which case the two concepts would emerge as contradictory rather than matching.

<sup>130</sup> According to Statowl, in June 2012 Google had 81,1% of the market share [http://www.statowl.com/search\\_engine\\_market\\_share.php](http://www.statowl.com/search_engine_market_share.php)

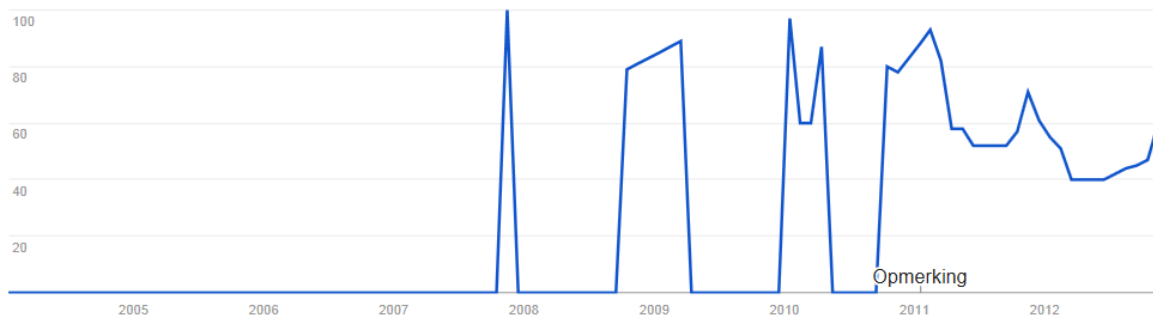


Figure 4: The frequency of the terms 'privacy' and 'veiligheid' (security) entered together by Dutch users into the Google search engine (2005-present)

### 3.4.1 Description of critical events and the security and privacy discourse

This paragraph provides a narrative description of the Dutch security and privacy discourse over the past decade. As various critical (chains of) events seem to have had a profound impact on the discourse, the discourse will be described within the context of these events. Based upon the terms, storylines and institutionalization as depicted in the tables of paragraph 1 and an additional reading of key news articles, the context of the discourse and the discourse itself are being described for each critical event.

#### 9/11

The first critical event which substantially influenced the Dutch privacy and security discourse over more than a decade were the September 2001 attacks upon the U.S. in New York City and Washington DC. The main Dutch radio and television news stations (e.g. Nederland 1, RTL4 Nieuws, Radio1, BNR) had a full media coverage on the day of the attacks. The next day, headlines of the three important Dutch newspapers read “*Attack on the U.S., Bush wants retaliation*” (NRC), “*Bush promises revenge for attack*” (Volkskrant) and “*U.S. at war*” (Telegraaf), which articles demonstrated strong emotions of shock and provided an overview of the course of events and the reactions of (amongst others) president Bush and the then Dutch prime minister Kok. In the days after the attack, most Dutch newspapers and television stations provided chronological accounts of the event (some minute to minute), made estimations of the number of victims and discussed the possible perpetrator Bin Laden. False incidents of planes allegedly off the radar of European or U.S. control towers (e.g. the so-called “missing” plane of the president of Cyprus) were headlined. Television stations recurrently showed the image of the planes hitting the WTC. All news providers interpreted the event as an attack on the symbol of capitalism and the power of the U.S. In the aftermath of the attack, news coverage focused on personal (tragic or heroic) stories (e.g. of firemen who tried to rescue people from the WTC building), the exact number of victims, the identity and motivations of the perpetrators (mostly stated to be Islamic fundamentalism), evidence against Bin Laden and repercussions of the US (and allies) against the ‘terror network of Bin Laden’ (used as shorthand for the Taliban, the Islamic fundamentalist movement). In addition, news stories emerged on new types of (nuclear, chemical and biological) weapons (e.g. Antrax) and ‘bio-terrorism’ such as the deliberate infection of people with all kind of viruses (e.g. Ebola virus) and possible new attacks (e.g. on president Bush, road tunnels outside Amsterdam and Rotterdam). Any accident which might even remotely have been caused by a terrorist act was headlined, extensively elaborated upon and linked to 9/11 (e.g. the Airbus crash near JFK airport New York, November 2001).

In politics, the 9/11 attack evoked intense emotions among Dutch politicians. In their first reactions, Dutch politicians showed strong feelings of abhorrence. In his press conference just after the attacks, the then Dutch prime minister Kok stressed the importance of respecting human rights in the case of a repercussion. In a press conference he stated:<sup>131</sup> *“Powell said [...] that if there will be ever a moment when one - who highly values democratic rights - has to know what he stands for, this will be it. And I find this stance of the Minister extremely strong and I think we have to achieve this together. [Reporter: Has it been an attack on the Western democratic system?] It has been a direct hit to the core of the U.S. [...] I generally call to use common sense and to find the balance which will be needed the coming period. [Reporter: what will be the greatest threat] The greatest threat lies in the possible continuation of forms of terrorism. Today [eds. ‘s attacks have] has shown that the [...] use of the weapon ‘terrorism’ can hit many vital targets at the same time. And the fight against terrorism is the foremost task. At the same time, we will have to try, however difficult this message will be - especially today, to – with even more power - maintain democracy and the respect of human rights. And I say this precisely today, now that others with their nasty means – with their inhuman means have violated every notion of respect for human rights. [Reporter: what will be a suitable reaction to this?] To think this thoroughly through. [Reporter: have you ever thought of such a scenario?]. I would rather not speak of a scenario, but what has happened today is beyond words and inconceivable. Anyone who yesterday would have predicted that this would happen, would have been called mentally ill. And still it happened. And this warns us that we should be prepared for the worse and that we should demonstrate determination, to show power just now with each other. Also mental power.”*

In the Dutch parliamentary debate about the 9/11 attacks<sup>132</sup>, the majority of parties started with strong condemnation of the attacks and showing their compassion for the American people. There was a broad agreement among parties that the attack on the US should be understood as an attack on ‘Western democracies’ in general and that the Netherlands should express solidarity with the US in their fight against terrorism. Parties stated that the attack on the US was an attack on democratic rights, such as freedom of speech. Some parties stated that also the Dutch were hit by the attack. Both the parties in office (the Labour party PvdA, the conservative-liberal party VVD and the social-democrats D66) and opposition parties contended that the 9/11 attacks could be perceived as a new form of terrorism in terms of impact (hitting central targets) and strategy (e.g. new type of ‘weapons’) and that defence strategies and policies should be changed in response to this new form of terrorism. The large majority of parties expressed their feeling that the Netherlands could also be a potential target and/or that this form of terrorism also could be a serious threat for the Netherlands. Several politicians stated that the attacks “have shown the vulnerability of modern societies”. Parties disagreed about and questioned the way in which the Netherlands should demonstrate their solidarity with the US and how they should translate this into tangible support. This contradiction and unanswered questions became apparent in the discussion on the content and the scope of article 5 of the Washington Treaty<sup>133</sup> on collaborative military action. Whereas several (predominantly right wing, but also PvdA) parties stated that article 5 could provide a basis for a possible military support of the US, other parties (e.g. the Socialist Party SP) found the application of article 5 unwise as the Netherlands consequently would be involved in (possible disproportional) repercussions conducted by the US. Both SP and Groenlinks (the

---

<sup>131</sup> Underlined words were strongly emphasized by the Dutch prime minister.

<sup>132</sup> TK, 2001-2002, 27925, No 6.

<sup>133</sup> <http://www.nato.int/cps/en/natolive/57772.htm>

Greens) expressed their fear of an international ‘spiral of violence’ and stressed the importance of respecting human rights in the response to the attacks.

Following this debate and meetings between ministers, the cabinet proposed extensive national security measures to be implemented, which were then discussed in parliament. Examples were the increased cooperation with relevant European intelligence agencies, enhancement of the Dutch intelligence services, the development of biometrical identification techniques, establishing a harmonized European visa policy, increased control of mobile telephone communications and legal basis for telephone taps. Although privacy was not frequently mentioned during parliamentary debates on these measures, in some instances politicians referred to the balance between privacy and security. D66 for instance stated in a meeting on countermeasures against terrorism<sup>134</sup> *“My party has great worries about the security of Schiphol. [...] We find it important that all passengers be thoroughly checked, as this enhances security. The sacrifice we all have to make will be longer queue times and possibly also having to take privacy infringements for granted.”* In the same debate D66 stated: *“[...] Sometimes one reads about Amsterdam, weapon depots, IRA, etc. On the Internet I found the measures taken by the German government. I mention the Rasterfahndung [drag nets], the linking of data which ignores all privacy aspects in order to detect the financial activities of criminals. In Germany, religious unions have been deprived of legal protection. In addition I read that all kinds of fundraising activities are forbidden or will be forbidden there [in Germany]. I do not mention this to ask the government to do the same, but I would like to know if all measures which we have taken following the Van Traa inquiry [...] are applicable to these kind of terrorist organisations.”*<sup>135</sup>

Other statements made by parties during this debate<sup>136</sup> which were related to privacy were for instance (the Christian Democrats, CDA): *“The CDA already stated that the freedom of the individual [eds. e.g. privacy] cannot be at the expense of security of the society. This starting point – according to us – also concerns internet, financial investigations, body searches and telephone taps”*. And the SGP: *“The question is whether current legislation sufficiently covers new technological possibilities and whether we have not over-protected privacy”*. GroenLinks: *“Measures have to be taken. We [GroenLinks] also realize that these [measures] can have consequences for privacy and the balance between security and privacy. Also my party is willing to reconsider their position on this”*. Deputy minister de Vries (VVD) stated in a newspaper interview in Trouw, 16 October 2001: *“The balance between privacy of citizens and the tracing by police and intelligence agencies has tipped over to privacy. Currently citizens are victims of privacy legislation more than they are protected by these regulations”*. And minister Korthals of VVD<sup>137</sup> in reaction to parliamentary questions about the statement of deputy minister de Vries: *“This [her statement on the balance between privacy and security] concerned in particular the retention period of data and so forth. We found that this [the retention period] should be extended. This is also what the [telecom] industry wants. For that matter, interests could – in the advantage of criminal investigations – match”*.

When considering various Dutch security and privacy debates in the aftermath of 9/11 it appears that some key metaphors have been used by politicians and newspapers. The most

<sup>134</sup> TK, 2001-2002, 27925, No 19.

<sup>135</sup> In 1996, Van Traa (Dutch politician of the labour party PvdA) led the parliamentary inquiry into criminal investigation methods.

<sup>136</sup> TK, 2001-2002, 27925, No 19.

<sup>137</sup> Ibid.

important ones might be ‘*Bin Laden*’ and ‘*the war on terror*’, of which the first personifies the general fear among politicians, journalists and the Dutch citizens of attacks by fundamental Islamic groups and the second shows the determination of the US and (in its slipstream) other countries to take all measures possible to combat terrorism. The omnipresence and intensity of the fear of terror in the aftermath of 9/11 is demonstrated by several articles reporting on incidents which the media immediately linked to the attacks (e.g. missing plane of president Cyprus, accident with Airbus near JFK) and extensively elaborated upon, but which eventually turned out to be unrelated events. Also the broad attention to all kind of other possible (nuclear, chemical, biological) weapons, potential targets and perpetrators express the general fear of attacks. The decisiveness of the Dutch government to fight terror becomes apparent seeing the numerous measures taken by the Dutch government to fight terrorism and the substantial increase of security budgets. Some of the measures were for example: the establishing of a National Coordinator for Counterterrorism and Security, the installation of a quick response team, the expansion of capacities of intelligence and security services, expansion of the possibilities to intercept and analyse international telephone conversations, increased border control, enforced surveillance at Dutch airports and the counterterrorism alert system.

When specifically looking at privacy, the limited number of political debates in which the notion privacy is mentioned is significant (e.g. when comparing it with the number of debates in which privacy was mentioned in 2011). When privacy is mentioned in 2001, the great majority of politicians explicitly state security to be of more importance than privacy. Most parties contended that they were willing to accept privacy limitations for the sake of security. The statements made by politicians reveal that they perceived the privacy and security balance to be a trade-off concept; more security necessarily implies less privacy and vice versa. Although prime minister Kok mentioned human rights to be of crucial importance in dealing with 9/11 (during a press conference on 9/11), the human right ‘privacy’ seems not to have received much consideration during the discussion on the security measures to be taken.

#### *Theo van Gogh assassination*

The second event which had a decisive impact on the security and privacy discourse in media and politics was the assassination of Dutch film director Theo van Gogh in 2004. The number of articles in the media and the intensity of Parliamentary debates reveal that the killing of Theo van Gogh had more impact on the security and privacy debate in the Netherlands than the bombings in Madrid (11 March 2004) and London (7 July 2005). The Dutch film director, author and television personality Theo van Gogh, was murdered by Mohammed B. on 2 November 2004. News stations had a full media coverage on the day of the murder. Several newsreels (e.g. Netwerk) invited prominent intellectuals to discuss the event, some of whom made strong statements on Muslims and the Islam. Bart Jan Spruyt – Dutch historian, journalist and right-wing conservative thinker – for instance stated in Netwerk “*This is not the work of one disturbed person. It yields from a certain culture*” and Paul Scheffer – author and eminent PvdA politician: “*Something like collective guilt does not exist, but there is an extra responsibility. Muslims have been too silent, they have frown away*”. The host of Netwerk (Tijs van den Brink) stated: “*Dialogue? Shouldn’t we be much tougher and say what is wrong with the Islam?*”. On 2 and 3 November the headlines of three key Dutch newspapers read: “Slaughtering” (Telegraaf), “Filmmaker Theo van Gogh murdered” (NRC) and “AIVD [Dutch intelligence services] knew suspect”. The Dutch newspaper Telegraaf published a large photo of the Theo van Gogh’s corpse on its front page with the knife that dealt the deadly blow still in the chest of the film director. All news providers expressed heavy

indignation about the assassination. In their first analyses, most news providers related the murder to the provocative attitude of the film maker (often called the ‘bête noir’ of Amsterdam’s intellectual elite) and his film ‘Submission’, which criticized the Quran. Several newspapers and the main news station NOS quoted ministers Donner (Justice) and Remkes (Internal Affairs) who stated that the perpetrator might have acted on to possibly have a radical Islamic basis. News providers interpreted the murder to be an ‘attack’ on the freedom of speech, many of them stating that it had been a *terrorist attack*.

To a far greater extent than after the attacks in New York, Madrid and London, the murder of Theo van Gogh evoked strong reactions among Dutch citizens. At the evening of the attack, a public “manifestation of noise” was held at the Dam square<sup>138</sup>, which was attended by around 20.000 people who brought all kind of instruments (e.g. whistles, pans, rattles) to collectively make noise. The idea to make noise came from a group intellectuals who called themselves “Friends of Theo” and who wanted to demonstrate that the killing of Van Gogh did not lead to silence and that they were not intimidated by the murder. On all kind of websites<sup>139</sup> fierce debates emerged and the website of Theo van Gogh (“The healthy smoker”) had to be closed down, due to the overwhelmingly number of posts on the website ([www.thevangogh.nl](http://www.thevangogh.nl)). The condolences website [www.condoleancepagina.nl](http://www.condoleancepagina.nl), which was opened one hour after the murder received 8,000 posts in the first two hours and subsequently was aborted as the website administrator found that there were too many racist reactions. Two other condolences websites also had to be closed down. The one register which could stay open<sup>140</sup> received around 47.000 contributions. Not only among Dutch citizens, but also among Dutch intellectuals and artists heated debates emerged. In talk shows (e.g. Barend and Van Dorp) and newspapers (opinion pages), these debates particularly focused on the right to freedom of speech and the curtailment and the boundaries of this right. Several artists stated that they were no longer able to make provocative statements as they feared repercussions by Islamic fundamentalists and that the killing of Theo van Gogh had led to self-censorship among artists.

At the time of the assassination of Theo van Gogh, the political climate in the Netherlands was characterized by an increased polarization – particularly on the subject of integration of ethnic groups - between left wing (e.g. SP, PvdA and GroenLinks) and right wing parties (mainly Groep Wilders and VVD). Several right wing politicians considered the murder of Theo van Gogh to be a confirmation of their opinion that the Islam was a serious threat, that the Dutch immigration policy should be much more restrictive and that police and intelligence services should have more power to combat Islamic fundamentalism (e.g. TK, 22-1278, 11 November 2004). According to these politicians, the Dutch government’s attitude towards migrants had been too soft and naïve (see also Hajer, 2007:5). Shortly after the killing, several public figures - among whom some politicians – positioned themselves as friends or acquaintances of the filmmaker and made use of the opportunity to stress their ideas about immigration, integration and/or freedom of speech. The VVD Minister Verdonk of Immigration and Integration for instance invited herself to the ‘manifestation of noise’ and held a speech in which she stated she had known ‘Theo’ and implied that she and the filmmaker were ‘on the same side’ (see also Hajer, 2007:10)<sup>141</sup>. Much more than was the case

---

<sup>138</sup> Hajer, 2007, p. 9.

<sup>139</sup> e.g. [www.fok.nl](http://www.fok.nl), [www.maroc.nl](http://www.maroc.nl)

<sup>140</sup> [www.condeleance.nl](http://www.condeleance.nl)

<sup>141</sup> VVD Minister Verdonk during the manifestation of noise: “I knew Theo. And I learned to know him better and better. Theo was the one who on the one hand said: ‘Rita, keep that back straight!’ But Theo was also the one that said: ‘But also think about yourself, and think about the people’”.

after 9/11 and the Madrid and London attacks, politicians participated in the ‘public’ debate, for instance through discussions with mixed audiences (e.g. artists, journalists, scientists) in talk shows (e.g. Barend en van Dorp).

During the parliamentary debate held after the murder of Theo van Gogh<sup>142</sup> politicians showed strong emotions. Wilders (Groep Wilders), who opened the debate, stated: *“Chairman. I am devastated and furious. I am furious, as Theo van Gogh is killed in a barbaric fashion by a Muslim terrorist, who also has fascist ideas. I am devastated, as my dear friend Ayaan Hirsi Ali has been threatened in an utmost disgusting manner for two years now, because of her statements and ideas and that – up to today - she cannot live a normal life. I am furious, as in many neighbourhoods in our country [...], people are terrorized by – not rarely – Moroccan youths. [...] But I am also furious as for years now Imams do things in Dutch mosques which do not stand the light of day [...]. Chairman. I am furious, as we know that there are 200 people in the Netherlands which are being observed by the AIVD, as they are willing to use violence for the Islamic Jihad and that these people are roaming free.[...] In the Netherlands we have been too tolerant for people who would like to kill democracy, like people who adhere to radical Islam and want to die for that.”* Van Aartsen (VVD party leader): *“Mr. Chairman. Since last week the country is anxious and confused. Something smoulders and slumbers. The attack on Theo van Gogh hits the core of our national identity, the freedom of speech. The self-image of the polder has – more or less – fallen into pieces. This [the polder] was more or less our national proud, our World Trade Center, which has been destroyed by a terrorist. Which may be the cause of the confusion”.* GroenLinks: *“Chairman. All strong words to describe the horrible murder on Theo van Gogh have been used. But a week after this terrorist attack we are still trembling. The pain in your stomach, the storm in your head, the elusive fear when you turn the corner of a street; whomever you speak to, the sadness is great, just like the confusion.”* SP: *“Mr. Chairman. The country is bewildered. The country is confused. People fear for escalation and ask themselves: what next? It has been only 9 days after the coward murder on Theo van Gogh. [...] The killing of Theo van Gogh was a terrorist attack.”*

In the Theo van Gogh debate, all parties agreed that increased security measures were needed. PvdA (opposition party) for instance stated: *“We get the feeling that this Cabinet reduces the threat of an international organized and financed political movement to an integration problem of ‘polder’ size. Then you completely miss the point. The real solutions, [...], should be sought elsewhere. Precisely because of the ruthless and international divided character of the political Islam, we have come to the conclusion that – at short notice – as regards the dealing with terrorists and potential terrorists emphasis should be placed on intensifying the approach of the police, Ministry of Justice and intelligence services. [...] And if more capacity is needed, then more capacity there should be. Our society has seen a threat which we did not know before. Against this [threat] measures may be taken which we also have not known before. [...In case of] an intensified use of powers, [...], we will always advocate a higher level of control of the actions of – particularly - intelligence services.”* And GroenLinks: *“Members of my party consider strong and effective measures against terrorism as inevitable and necessary. We do not disagree about the goal of a strong and effective fight against terrorism. We will never leave the Cabinet a total free hand in their measures, but we are willing to go beyond our political interests if the Cabinet demonstrates the necessity and the efficiency of the measures.”* CDA and VVD (both parties in office – together with D66) stated that they supported the measures proposed by the Cabinet<sup>143</sup> among which: the

<sup>142</sup> TK, 29854, 11 November 2004.

<sup>143</sup> TK, 29854 no. 3.



elimination of resentful websites, increased observation by AIVD (Dutch intelligence agency) of persons who are – in some way – related to terrorism or radicalization, intensified searches on unknown radical or extremist persons, investment in data mining techniques, real-time access of AIVD to relevant datasets, expansion of AIVD capacity to gain intelligence abroad.

During the Theo van Gogh debate, privacy was mentioned in one instance by party leader of the CDA Verhagen. He stated: *“We should act now against potential terrorists. Security really is of more importance than privacy. We came to that conclusion before. We see that there is public support for this [statement]. Namely, someone who does not have anything to hide, does not have to fear.[...] For that matter I notice that some time ago the College Bescherming Persoonsgegevens [Dutch privacy watchdog] had strong criticism [on the extension of the powers of intelligence services]. That College stated that the necessity of the extension of powers was not proven. I however think that the murder of Van Gogh demonstrates that there actually is a necessity.”* In a meeting of the parliamentary commissions on internal affairs and justice on the subject ‘counterterrorism’<sup>144</sup>, which assembled shortly after the Theo van Gogh assassination, privacy or privacy related subjects were mentioned a few times by other parties. PvdA stated: *“According to professor of Administrative Law Brenninkmeijer, the constitutional state nor the protection of the freedom of citizens [e.g. privacy] is in conflict with enforcement of the powers of police and the judiciary when needed. The constitutional state is a safe state in which the government ensures the protection of [the security of] citizens.”* And CDA: *“The CDA perceives life more important than an inviolable legal position. Law is produced by humans, based on agreements and convictions. The CDA finds the constitutional right to security the most important right. Public security is the oldest classical task of the government. One has to act united and decisive in the war against terrorism.”* SGP: *“The underestimation of terrorism in the name of the Islam is a greater threat to an open society than limitations to privacy”*. Groenlinks stated during this debate that *“measures should be taken to effectively deal with the terrorism threat.”* However, Groenlinks politician Vos stated that she was shocked by the way in which the Cabinet developed its new policy. She was concerned about the terminology used by the Cabinet and the extension of powers [of e.g. intelligence services] and stated: *“According to the Cabinet the Netherlands is at war. Does the Cabinet imply it has the permission to take measures with which it can extensively affect the rights and privacy of people?”*

Furthermore, it seems that top officials interpreted the role of the CBP restrictively and that they perceived the role of the CBP to be supportive to government policy making. Minister Donner (CDA) of Justice for instance stated in a debate on counterterrorism<sup>145</sup> shortly after the killing of Theo van Gogh that he would exchange thoughts with the CPB on the subject of privacy, but that the CPB should not be charged with the monitoring of operational actions. He agreed with the parliament that there should not be the impression that law enforcement agencies (e.g. intelligence agencies) do not comply with legislation (e.g. in case of information exchange ). He however did not want to *“[generally] commit himself to the submitting of protocols for approval to CBP or asking the CPB for formal advice”*. He stated that: *“Generally the CBP is quite cooperative, when it is aware of the facts.”*

When taking stock of the security and privacy debates after the Theo van Gogh murder it seems that the murder has been firmly framed by politicians as a *terrorist attack*. Whereas

---

<sup>144</sup> TK, 27925 and 29754.

<sup>145</sup> TK, 27925 and 29754, 2004-2005, no. 149.

before 9/11 political or ideological murders often were referred to as *assault or assassination* (the murder of a prominent person or political figure by a surprise attack usually for payment of political reasons) politicians and media agreed this to be a an *attack* (as in military terms) of a *terrorist* – someone who uses or threatens to use violence against people with the intention of intimidating or coercing societies or governments for ideological or political reasons. In other words, the Van Gogh assassination was interpreted as an act of intimidation with the aim to disorder society and government. Some politicians spoke of the Netherlands being at war against terrorists. The word combination ‘Terrorist attack’ was not only used to describe the murder of Theo van Gogh, but also to describe the killing of Pim Fortuyn (a Dutch controversial politician) by a native animal rights activist two years earlier. In addition, the word ‘terror’ was used to describe all kind of violations and crimes such as ‘street terror’ – youths loitering around neighbourhoods while annoying and harnessing passers-by. Terrorist attacks were understood to be the great threat which could occur anytime and anyplace and by any extremists. Media and politicians clearly felt that with the killing of Van Gogh the Netherlands had been targeted by terrorism. Both media and politicians expressed their fears and (strong) emotions. All political parties asked for more security measures and most of them stated security to be of more importance than privacy. Only rarely potential privacy infringements were mentioned. Privacy was generally perceived as an impediment for security measures and the CBP in some instances as hindrance-causing institute. In some discourses it seemed that people who brought up privacy implications were perceived to be obstructers to (security) measures or nags.

#### *Several publications on privacy in the Netherlands*

From 2006 onwards, the security and privacy discourse seemed to slowly alter in the sense that privacy as a notion seemed to become more “salon-fähig” and that privacy concerns were more openly discussed. Publications of leading institutes, such as the Dutch Rathenau Institute (a research organization, founded by the Ministry of Education, Culture and Science) and Privacy International (an international advocacy organization which campaigns on privacy issues), may have substantially contributed to the renewed discussions on privacy subjects. In 2006, GroenLinks (the Greens) for instance asked questions about a yearly publication of Privacy International in which it ranks countries on the extent to which they respect human rights. In the 2006 report, the Netherlands was ranked 23th of countries which protect their citizens’ privacy (below countries such as Hungary, Slovakia and Lithuania)<sup>146</sup>. Of the maximum of 5.0 points for countries which ‘consistently uphold human right standards’ (top three: Germany, Belgium and Austria), the Netherlands had 2.3 points and was labeled by Privacy International as a country which has ‘some safeguards but weakened protections’. GroenLinks submitted the following question on 14 November 2006<sup>147</sup>: “[Minister], do you know the research of Privacy International and Electronic Privacy Information Center, which shows that in the Netherlands privacy protection systematically fails? [...]”. Minister Hirsch Ballin (CDA) replied in a formal answer on 22 December 2006<sup>148</sup>: “[...] The in the research mentioned (Dutch) competences, such as telephone and internet taps and the exchange of personal data, are compliant with the EVRM, European case law and article 10 of the constitution. [...] These competences are necessary in a democratic society. The competences aim to contribute to the national security, which complies with the in article 8, clause 2, of the EVRM mentioned goal criterion. [...] In other

---

<sup>146</sup> Privacy International, (2006), Surveillance Monitor 2006, International country rankings, based on EPIC Privacy and Human Rights Report, London.

<sup>147</sup> TK, 2006-2007, 2060702930.

<sup>148</sup> TK, 2006-2007, supplementary document no. 538.

*countries, such as Germany and Belgium, elements of legislation have also been modified because of counter terrorism measures. I do not see any reason to take measures [to strengthen privacy].”*

In 2007, the (aforementioned) Rathenau Institute published the report “From privacy paradise to surveillance state?”<sup>149</sup> in which it stated that since 9/11 the Dutch government (and governments of other countries) had taken many security measures (e.g. extension of retention dates of telecom data) which till 9/11 were unconceivable because of privacy infringements. The institute noticed that the security measures taken up till then, did not raise much public debate. In addition, it stated that the technological developments (e.g. advanced telephone taps, surveillance cameras, DNA profiles, data-mining) together with the far-reaching extension of powers of law enforcement agencies, provided these agencies with an almost unlimited access to personal data of citizens (Rathenau, 2007:6). The institute called for a societal and political reconsideration of the question to which extent ‘we as a society’ want to give up privacy for security. On 31 May 2007, D66 submitted questions about the Rathenau report and a publication “Protection privacy requires more sanctions” in the Dutch newspaper NRC (12 May 2007) to the Ministers of Justice and Internal Affairs<sup>150</sup>: “[Minister], do you agree that the CBP should have more possibilities to sanction in case of privacy infringements? [...] Do you agree with the Rathenau’s statement that the whole of security measures fails to be discussed in a public debate? Do you share the concerns and agree that it is time for a fundamental debate about the emerging technologies and privacy [...]?”. The Minister Hirsch Ballin (CDA) stated in reaction on 11 July 2007 to this<sup>151</sup> “There are different views as regards the question whether the CBP has sufficient or insufficient possibilities for sanctioning. [...] The first evaluation of the WBP [Dutch data protection act] is currently being conducted. [...] The society is confronted with increased digitalization and internationalization. [...] There is [...] a cause to consider if and in what way the privacy policy should have a new impulse.”

Whereas up to mid-2007, the several Dutch cabinets (existing of both left wing and right wing parties) had consistently pursued a policy in which security measures were perceived to outweigh privacy, in July 2007 one of the ministers explicitly stated that the Dutch privacy policy might need a new impulse. It seems that at this moment the security and privacy discourse took a turn and that – in the political debate – privacy started to received more attention. However, the political attention to privacy concerned very specific – technology related - aspects of privacy.

#### *Media-driven discourse on the implications of new technologies*

From 2008 onwards, media increasingly reported on the possible privacy violations by (mostly social network) websites (e.g. NRC and Volkskrant 2008). Alarmed by the news reports, political parties started to expressed their concerns about the online collecting and use of personal data by commercial businesses. On 5 November 2008, members of parliament Heerts and Bouchibti (both PvdA) submitted questions to the Minister of Justice on the online privacy protection of children (TK, 2008-2009, 2080904630, nr. 912): “Is it true that the administrators of Internet sites do not check whether children under 16 have the permission of their parents to publish personal data on the network sites, which, based on article 5 of the

<sup>149</sup> Rathenau Instituut, *Van privacyparadijs tot controlestaat? Misdaad- en terreurbestrijding in Nederland aan het begin van de 21<sup>ste</sup> eeuw*, Den Haag, 2007.

<sup>150</sup> TK, 2006-2007, 206071600.

<sup>151</sup> TK, 2006-2007, supplementary document no. 2146.

WBP [Dutch data protection act], is obligatory? Are you willing to conduct research on this and – when needed – to alert to administrators that they have the legal obligation to ask parents for permission? [...]”. And on 24 November 2008, member of parliament Atsma (PvdA) submitted a proposal to conduct a study on the online privacy protection of children. Atsma stated (TK, 2008-2009, 31700 VIII, nr. 49): “[...] finding that many commercial websites still collect personal data of children without verifying whether the children have the approval [of their parents]. [...]requests the government to conduct research on the bottlenecks of the CBP [Dutch data protection supervisor] directives and to examine whether it would be possible to develop Dutch legislation conform the American COPPA (Children’s Online Privacy Protection Act)”. On 10 December 2008<sup>152</sup>, minister Hirsch Ballin provided the parliament with an extensive response in which he stated that in case of the data collection of children under 16, according to the WBP (Dutch data protection law) administrators of websites should verify whether the children have the permission of their parents to publish personal data. However, the minister stated not to be able to give an indication of the extent to which websites comply with this regulation. The cabinet stated that “*this subject [online privacy protection of children] has the full attention of the government, in particular of the Ministers of Justice and Youth and Family*”<sup>153</sup>.

On March 2008, the Ministry of Justice and the Ministry of the Interior decided to establish a temporary commission ‘Security and private spheres’, also referred to as the Commission ‘Brouwer-Korf’. Key task of this commission was to consult the government about the drafting of legislation and providing of information to citizens about security and privacy issues. The main conclusions of the Commission were that on the operational level (professionals involved in law enforcement) more attention should be paid to privacy protection of citizens and that the Dutch privacy watchdog CBP should work more independently. The Commission found that, as the CBP is founded by the Ministry of the Interior and predominantly perceived by government officials as an advising and facilitating body, the CBP would not be able to forcefully supervise government actions. The commission advised a fundamentally different role for the CBP, namely focused on critically monitoring government policy instead of supporting government. Both the cabinet and the large majority of political parties endorsed the conclusions of the Commission<sup>154</sup>.

Meanwhile, the discussion on security had taken a turn as well, as ever more emphasis was placed on the subject ‘cybersecurity’ (protection against criminal or unauthorized use of electronic data). Due to several incidents (so-called ‘phishing attacks’, data leaks, examples of identity theft and hack of the Dutch public transport chip card) and reports on ‘emerging cybercrime’, members of parliament increasingly submitted questions and proposals on cybersecurity. In July 2010, the Dutch national police published a report which identified important ‘crime areas’ and stated ‘high tech crime’ to be one of these areas<sup>155</sup>. In the report it was said that: “*The growth of the phenomenon cybercrime and high tech crime undiminished continues. As far as measurable, the numbers show an exponential growth over the years - in some sub areas of 100% each year. This growth is enabled by the fast digitalization of societies which yields new ‘attack vectors’. In addition, the cyber security awareness within society is low. [...]*”. Both left wing and right wing parties posed questions on the subject and submitted proposals in order to enforce cyber security. On 27 August 2010, member of

<sup>152</sup> TK, 2008-2009, 2080904630, no. 912.

<sup>153</sup> TK, 2008-2009, 31700 VIII, no.144.

<sup>154</sup> TK, 2009-2010, 31051, no. 5.

<sup>155</sup> KLPD – Dienst National Recherche, (2007), Overall-beeld Aandachtsgebieden, Driebergen

parliament Gesthuizen (SP) asked the minister of Justice and Economic Affairs<sup>156</sup>: *“Do you know the news report on the exponential growth of cybercrime in the Netherlands [Dutch news provider webwereld.nl]? How many incidents of cybercrime are there on a yearly basis?”*. And the member of Parliament Recourt (PvdA) submitted the following question (TK, 2010-2011, 2010Z15331): *“Have you seen the Nieuwsuur program [Dutch newsreel] on cybercrime? Do you agree with the interviewees, among which a public prosecutor specialized in cybercrime, that the power of police and justice should be extended as regards cybercrime, more specifically the possibility to ‘re-hack’, irrespective of the location of the computer?”*. On 7 January 2011, the member of Parliament Schaart (VVD) asked the minister of Economic Affairs<sup>157</sup>: *“Have you read the article ‘Dutch companies target of cyber-attacks’ [Dutch online news provider Nu.nl]? Are you aware of the fact that the Netherlands is among the countries with the most ICT security incidents within the European Union and that Dutch companies are often victim?”*

Between 2007 and 2010, both the privacy and the security debate took a significant turn. The influence of emerging technologies played a dominant role in both discourses. In the security debate new terminology appeared (e.g. ‘cybercrime’, ‘cyber war’, ‘cyber attacks’, ‘cyber defense’) and the privacy debate was highly focused on online privacy of citizens and data protection. At the onset of the online privacy and cybersecurity discourses, the debates were held separately and in some instances statements of parties in the debates were even contradictory. The PvdA for instance asked the minister of Security and Justice in the cybersecurity debate to extend the power of law enforcement authorities to fight cybercrime (e.g. by providing them with the power to ‘re-hack’ computers) and – in a parallel debate on online privacy – demanded from the same minister measures to enhance the online privacy of internet users. An integral discussion on technological developments and the implications for security and privacy seemed to be missing. In addition, as stated before the security – the privacy discourse was heavily focused on technological implications while leaving out other aspects of privacy (e.g. seclusion, bodily integrity, private possessions and property).

### *Security meets privacy*

In the summer of 2011, the debate on social media and privacy seemed to peak as a flood of parliamentary questions were posed on this subject by both left wing and right wing parties. Most of these questions yielded from news reports. On 11 August 2011, members of parliament Recourt and Van Dam (PvdA) for instance submitted the following question to the Minister of Security and Justice: *“Do you know the article ‘How LinkedIn links users and advertising?’ [Volkskrant, 4 August 2011]? [...] Is it true that the network site LinkedIn has changed user settings in such a way that photos and names of users can be used unasked for advertising? [...] Does the CBP act upon this?”* On the same day Recourt and Van Dam submitted the question<sup>158</sup>: *“Are you aware of the fact that Facebook – through the special Facebook application for smartphones – automatically synchronizes the contact persons from telephone lists with [Facebook] friends and that consequently telephone numbers of Facebook friends automatically appear on someone’s Facebook page?”*. On 17 August 2011, members of parliament Verhoeven and Schouw (both D66) asked the minister (2010-2011, 2011Z16149): *“Are you aware of the article ‘Companies neglect privacy legislation’ [Telegraaf, 13 Augustus 2011]? Do you share the observation being set out in this article that companies should provide [users] access [to personal data] but that they rarely do so?”*. And

<sup>156</sup> TK, 2009-2010, supplementary document no. 3367.

<sup>157</sup> TK, 2010-2011, 2011Z00123.

<sup>158</sup> TK, 2010-2011, 2011Z16066.

on 4 October 2011, member of Parliament Verhoeven (D66) submitted the following question to the minister of Economic Affairs, Agriculture and Innovation (TK, 2011-2012, Aanhangsel 556): “*Did you read the article “Call for investigation use of cookies by Facebook?” [Dutch news website nu.nl]? What is your opinion on the collecting of privacy sensitive information by Facebook through the use of undeletable cookies?*”. In most of the instances the responsible minister or deputy minister referred to the CBP (Dutch privacy watchdog) stating that the CBP is responsible for the supervision of compliance to the WBP (Dutch data protection law) in specific cases.

In addition, discourses emerged in which privacy and security were mentioned as matching instead of competing values. Whereas in the aftermath of 9/11 and the Theo van Gogh assassination security and privacy were understood by politicians as rival notions, since 2011 there was a general call for security measures to protect citizens’ privacy. The Dutch government stated in its report ‘Cybersecuritybeeld NL’ (2011) that: “*The government and businesses store many personal data and citizens - in a voluntary manner - share much personal information through amongst others social networks. Ever more privacy sensitive information is in detail stored in [so-called] profiles, but is also linked to other data. The detailed storage makes that people are vulnerable for malicious or undesirable use or publication of the information.*” Also in political debates, privacy and security were increasingly mentioned in the same sentence, as part of the same perceived problem. On 13 October 2011, the members of parliament Gesthuizen and El Fassed (respectively SP and GroenLinks) stated in a proposal that<sup>159</sup>: “*[...] considering that the insufficient direction in ICT security policy and privacy protection has led to several instances of deficiencies and the danger of citizens’ privacy and security. [...] [We have] the opinion that a parliamentary inquiry on the causes, effects and possible improvements of the [...] government ICT security [...] is needed.*” And Gesthuizen (SP) and Verhoeven (D66) proposed on 27 October 2011<sup>160</sup> “*[...] recent problems as regards privacy, security and the protection of citizens on the internet reveal that the Netherlands has to take necessary steps in the area of ICT-security. [...] The party] asks the cabinet to inform the parliament in the first quarter of 2012 about its vision [on ICT security].*”

In more recent years, both the security and privacy debates have been highly technology driven. In the privacy debate a strong focus can be found on data protection (the creation of safeguards for individuals relating to personal data stored on a computer) and in the security debate on cyber security. “Facebook” or “LinkedIn” may have been the most important metaphors in the privacy discourse, which terms can be perceived as emblems of the debates about privacy infringements by commercial websites. “Cybersecurity” seemed to be a dominant metaphor in the security debate, which term was used for all kind of technological security measures. In addition, both debates seemed to have converged as the notion (cyber) ‘security’ is increasingly defined as a precondition for (online) ‘privacy’. Cyber security and online privacy have been institutionalized in all kind of new rules, policies and organisations. As regards cyber security, the Ministry of Security and Justice for instance implemented a National Cyber Security Strategy, drafted a directive on baseline information security, established the Cyber Security Board, Information Point Cybercrime and the National Cyber Security Centre. Measures taken to strengthen online privacy were (amongst others) the drafting of Cookie legislation.

---

<sup>159</sup> TK, 2011-2012, 26643, no. 194.

<sup>160</sup> TK 2011-2012, 24095, no. 294.

### 3.5 GENERAL CONCLUSIONS AND REFLECTIONS

When taking stock of the security and privacy debate in the Netherlands, a number of interesting patterns emerge. First, it seems that the framing of security and privacy in the Netherlands has taken place particularly in the media and parliament. Here, (new) meaning has been attributed to the notions security and privacy, which were reproduced in all manner of policy documents and eventually translated into concrete measures. Contrary to other countries, in the Netherlands the data protection supervisor CBP has played a very limited (almost negligible) role in the discourse. Moreover, the role of the CBP was perceived until the report of the security and privacy Commission Brouwer-Korf in 2009 as supportive and compliant to the Ministry of the Interior. The analysis of documents shows that after critical events, such as 9/11 and the Theo van Gogh assassination, strong ideas on the balance between security and privacy were predominantly conveyed through media and politics. These ideas had a certain regularity in the sense that security and privacy were perceived as a trade-off concept and security was generally given more importance than privacy.

A second pattern that emerges from the discourse analysis is the break with the discursive tradition in which privacy had been perceived as less important than security and the increased convergence of security and privacy debates. Whereas between 2001 and 2007 security and privacy were generally understood as rival values, from 2008 onwards security and privacy were increasingly mentioned as matching values. After 9/11 and the Theo van Gogh assassination there was a general call for more security – if needed at the expense of privacy. The debates on security and privacy mostly took place separately, within different parliamentary commissions or – in the media – in different television programs or news articles. Although today this separation between debates still can be noticed (e.g. in 2011 the PvdA party submitted a proposal to extend the online power of intelligence agencies in the one debate and submitted proposals to strengthen online privacy of users in another debate) the debates seem to converge more and more. Over the past couple of years, security started being mentioned more often than privacy, often as a precondition for privacy protection (i.e. technological security measures that should be taken in order to protect citizens' online and offline privacy). Over the years, a conceptual shift can be distinguished in the way in which privacy and security are defined and understood (i.e. from rival values to matching values) as well as an increased integration of the hitherto separate debates on privacy and security.

Third, important metaphors used in the discourses were “*terrorism*” and “*Facebook*” or “*Linkedin*”. The term terrorist attack was for instance not only used in cases of an attack (in military terms) of a group of people whose intention was to intimidate society and government, but in all kind of other cases, such as the assassination of Pim Fortuyn by an animal rights activist. Various incidents were viewed through a “terrorism” lens: for example youths loitering in urban areas and disturbing the public order were referred to as street terror. Terrorism functioned as an emblematic issue; it was an emblem for the general fear of disruption of the Dutch society by extremist actions. While “terrorism” was an important metaphor in the security discourse, “Facebook” or “Linkedin” may have been the most important metaphors in the privacy discourse. Facebook and Linkedin can be perceived as emblems of the debates about privacy infringements by commercial websites. Media and politics seemed to share a mutual understanding of intentional violation of users' privacy by commercial websites for the organizations' gain and frequently used Facebook or Linkedin as emblem for this behaviour.

Fourth, in both the media and the political debate the way in which the concept privacy is defined is relatively narrow. The past few years there was a strong focus in the discourse on online data protection (generally defined as safeguards for individuals relating to their personal data stored on a computer). The right to privacy however can be interpreted much broader. In literature, privacy has been defined as both a negative and positive right. Whereas the negative perspective focusses on forms of privacy infringements, the positive perspective tries to define find ways to strengthen individuals' privacy (e.g. Solove, 2008). When comparing the definitions and taxonomies in literature with the definitions used in the political and public discourse it seems that the latter do not do justice to the complexity of the notion privacy. Forms of "off-line" privacy invasion seem to be under-exposed in the discourse, such as invasive acts that disturb one's tranquillity or solitude, incursion into a subject's decisions regarding private affairs or the revealing of someone's nudity, grief or bodily functions. In addition, the right to privacy is rarely addressed within the broader context of the full spectrum of fundamental rights.

Sixth, institutionalization. Overall, privacy protection in the Netherlands seems to remains limited, as revealed by the on-going institutionalization of the fight against terrorism and a limited role for the Dutch data protection authority.

### **3.6 HYPOTHESES FOR THE PRISMS SURVEY**

Based upon the observations made in the previous paragraphs the following hypotheses can be formulated. These hypotheses shall be verified through the WP8 survey of the PRISMS project.

- The understanding of the notions 'security' and 'privacy' is predominantly shaped by media and politics, with only a limited role for watchdogs and citizens.
- The framing of the notions 'security' and 'privacy' by media and politicians is highly influenced by incidents and lacks a more profound vision on these concepts.
- In today's discourse, the complex notion privacy is interpreted narrowly with a strong focus on the relation with technology, while under-exposing other (mostly off line) aspects of privacy.
- In today's discourse, very specific aspects of online privacy (e.g. data protection) receive much attention, while a broader and more fundamental discussion on human rights is lacking.
- The notions 'security' and 'privacy' have been predominantly approached by media and politics as a trade-off concept – more security by default implies less privacy and vice versa.
- In political debates, general statements about the balance between security and privacy were made which did not do justice to the complexity of the notions and the complicated relationship between the notions.
- In the past decade, the problem definitions and concepts underlying the notions 'security' and 'privacy' have substantially changed from mainly 'terrorism' to 'technology' driven.
- Around 2008, in the Netherlands there was a break with the discursive tradition (from 2001-2007) in which security was perceived to be more important than privacy (until then the term security had more rhetorical power).
- Around 2008, in the Netherlands there was a break with the discursive tradition (from 2001-2007) in the sense that the 'complaining' connotation of the word privacy



diminished (privacy as a notion became more popular, salon-fähig, ‘sounded more right’).

- In the past decade, the discourse coalition among Dutch political parties shifted from the shared use of a story line focused on terrorism to the shared use of a story line focused on emerging technologies.
- After 9/11 and the Theo van Gogh assassination, the shared story line of Dutch political parties that ‘far-reaching security measures were needed to combat terrorism’ has been highly institutionalized (reproduced in policies, organizations and translated into various of practices).
- The security discourse has been much more institutionalized (translated into policies, rules, organisations) than the privacy discourse.