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Commission of
Supervision of the
Intelligence and
Security services

CTIVD no. 22B

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Table of contents

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| | | |
|---|---|----|
| | Summary | 3 |
| 1 | Introduction | 6 |
| 2 | Research design | 8 |
| 3 | In short: context and frame 10 | |
| 4 | Bilateral cooperation with foreign services | 14 |
| | 4.1 Entering into An cooperative relationship | 14 |
| | 4.2 Cooperation Agreement income from foreign services | 16 |
| | 4.3 Maintaining and adjusting a collaborative relationship | 18 |
| | 4.4 Role of the External Relations Office | 21 |

| | | |
|---|---|----|
| | 4.5 Role of defense attachés and liaisons | 22 |
| 5 | Exchange of data | 24 |
| | 5.1 Provision of general information | 24 |
| | 5.2 Provision of personal data | 27 |
| | 5.3 Additional requirements for the provision of (personal) data | 30 |
| | 5.4 Acquisition of data from foreign services | 31 |
| | 5.5 Cooperation in security investigations | 33 |
| 6 | Technical and other forms of support | 34 |
| 7 | Joint operations | 37 |

| | | |
|-----|--|----|
| 8 | Multilateral cooperation with foreign services | 40 |
| 8.1 | Multilateral cooperation within NATO | 40 |
| 8.2 | Multilateral cooperation within the EU | 42 |
| 8.3 | Ad hoc multilateral cooperation | 43 |
| 9 | Cooperation in the context of the mission in Afghanistan | 44 |
| 9.1 | Providing support and conducting joint operations | 45 |
| 9.2 | Data exchange in and outside the mission area | 45 |
| 9.3 | Development of the cooperation relations | 46 |
| 10 | Conclusions and recommendations | 47 |
| | Glossary | 49 |

**Intelligence and Security
Oversight Committee
Security services**

CTIVD no. 22B

In the supervisory report on the cooperation of the
MIVD with foreign intelligence and/or security services

The Intelligence and Security Services Review Committee (hereinafter: the Committee) has investigated how the Military Intelligence and Security Service (MIVD) cooperates with foreign intelligence and/or security services. The Committee has assessed whether this cooperation took place within the legal framework in the period from early 2007 to late 2013. In the legal appendix to this report, the Committee makes a number of recommendations to the legislator who can include it in the impending amendment of the Wiv 2002.

The general picture of the cooperation is positive The general picture of the Commission of the cooperation of the MIVD with foreign services is positive. The number of irregularities is limited. The exchange of personal data, the provision of support and joint operations mainly take place with foreign services that meet the applicable cooperation criteria. This report provides an overview of how the MIVD shapes these different forms of cooperation. The main recommendations of the Commission focus on adjusting the internal policy.

Guarantees for cooperation with foreign services International cooperation is of essential importance to the MIVD. In this cooperation, the MIVD must observe the guarantees for personal privacy. For example, the law states that the degree of cooperation with a foreign service must depend on the extent to which the cooperation criteria from the legislative history are met. The law also explicitly regulates when the MIVD may provide data to a foreign service. In addition, a number of guarantees are provided in general and specific legal requirements. These guarantees also apply to the processing of data and the use of (special) powers. This report has a legal appendix in which this legal framework is described in detail.

Bilateral cooperation relations When entering into, intensifying or limiting cooperation relations with foreign services, the management of each individual foreign service must fundamentally assess the extent to which the cooperation criteria set are met. The Commission notes that this does not always happen and recommends that this policy be effectively applied in future.

The External Relations Office is responsible for managing, coordinating and facilitating the (inter)national contacts of the MIVD. This office also initiates and coordinates the policy aimed at maintaining favourable (inter)national relations and at ensuring the information position for the correct execution of tasks by the MIVD. The Commission notes that the operational departments do not always involve and inform the External Relations Office sufficiently.

The advisory role of the External Relations Office towards the service is also not sufficiently developed. The Commission recommends that the External Relations Office be better positioned in practice.

Multilateral cooperation The MIVD also cooperates in multilateral cooperation. Such cooperation is essential, especially when crisis management operations are carried out in coalition. Formalised cooperation can take place within the framework of organisations such as NATO and the EU, but also ad hoc cooperation. The Commission has not found any irregularities in this context.

Providing data to foreign services The MIVD exchanges data with a large number of services on all kinds of subjects. This may involve general reports, but also specific information about persons or organisations. The MIVD uses general assessment criteria for the provision of data. The Commission notes that the policy for the provision of personal data is based on too narrow a definition of personal data. Furthermore, the MIVD does not distinguish in its policy on paper between the provision of personal data to foreign services that meet the cooperation criteria and services for which this can be doubted. In practice, however, the Commission sees that the MIVD mainly provides personal data to services for which there is no doubt as to whether they meet the cooperation criteria. With the exception of one case, the Commission has not found any irregularities in this context. The irregularity concerned provision to a foreign investigation service. The law does not allow for this. Furthermore, it has become apparent that in some cases the MIVD provides raw investigation results, such as telephone and traffic data, in their entirety to a foreign service. The Commission is of the opinion that the MIVD should exercise restraint in this regard. The service must assess whether integral provision is necessary and proportionate.

The third-party rule The

law states that when providing data, the condition is included that the data may not be provided to other parties without the permission of the minister. This is the so-called third-party rule. The MIVD prefers the broader third-country rule instead. This method is not in accordance with the law and is therefore unlawful.

Receiving data from foreign services The MIVD also receives data from foreign services, whether requested or not. The Commission notes that there is no policy regarding requests for information from a foreign service. The Commission considers it important that the MIVD draws up a policy on this matter. Particularly when it concerns requests to services for which it is doubtful whether they meet the cooperation criteria. In practice, the MIVD only makes requests to foreign services to a limited extent. The Commission has not found any irregularities in this context. It has also not found any cases in which the MIVD had indications that the data provided to it had been obtained unlawfully.

Providing support and joint operations The law gives the MIVD the scope to use powers exclusively in the interest of a foreign service (providing support). The law requires the Minister of Defence to give permission for this. The MIVD can also receive support from a foreign service. Providing support is different from carrying out joint operations. The MIVD carries out these operations in collaboration with a foreign service in the context of its own ongoing investigation. The Minister's permission is not required for this. The Commission recommends that the MIVD pay more attention to this distinction in its policy. The MIVD regularly provides support and the Commission has found that in a number of cases of support it was wrongly assumed that a joint operation was taking place. As a result, permission was not requested from the Minister of Defence. Since the law does require this, the Commission considers these cases of support to be unlawful. Incidentally, the MIVD has increasingly started working with ministerial orders during the investigation period. The service now not only submits the cases of support to the Minister for approval, but also the joint operations. The Commission is positive about this.

The Commission investigated the joint operations of the MIVD in the Netherlands and abroad. The MIVD mainly carries out these operations with services with which it has a long-term cooperative relationship. Reliability, professionalism and the working methods of the foreign service are important criteria for the MIVD. In general, the MIVD complies with the conditions of the law when carrying out these operations. Nevertheless, the Commission found a limited number of irregularities and carelessness. For example, according to the Commission, the MIVD acted in violation of the statutory obligation to protect sources in a joint operation.

Cooperation in Afghanistan Finally, the Commission also specifically focused on the cooperation of the MIVD with foreign services in the context of intelligence support for the deployment of the armed forces in Afghanistan (in the period from 2006 to 2013). During this period, there was frequent exchange of both requested and unsolicited data. The MIVD can exchange data in the mission area via shared communication systems, but also via deployed units of the MIVD on site. In this context, the Commission did not find any irregularities in the data exchange of the MIVD with foreign services. Any contribution that the MIVD made to the elimination of targets in Afghanistan (*targeting*) was not included in this. The Commission will pay attention to this subject in its investigation into the contribution of the MIVD to *targeting*, announced on 22 May 2015.

**Intelligence and Security
Oversight Committee
Security services**

CTIVD no. 22B

**About the cooperation of the MIVD
with foreign intelligence and/or security services**

1 Introduction

International cooperation is essential for the Military Intelligence and Security Service (MIVD) to adequately fulfil its tasks. The data that the service obtains through this cooperation significantly strengthens its information position. As a result, the MIVD is better able to deliver reliable and high-quality intelligence and security products. These products are necessary for the effective deployment of the armed forces and an independent information position of the Netherlands and thus for national security.

International cooperation takes place in a field of forces of interests. In many cases there are shared objectives, such as the international fight against terrorism and piracy or the support of a military mission in a coalition. However, there is rarely any question of friendly services. The MIVD must therefore move cautiously in the international playing field. Making conscious and sound considerations is not only important for a good, independent information position of the Netherlands, but also for the protection of personal privacy. The Intelligence and Security Services Act (Wiv 2002) provides the framework for this cooperation. The research question that the Intelligence and Security Services Supervisory Committee (hereinafter: the Committee) focuses on in this report is to what extent the MIVD's cooperation with foreign intelligence and/or security services takes place lawfully.

The supervisory report is structured as follows. Chapter 2 outlines the research design. Chapter 3 briefly discusses the context within which this report should be read. Here you can read about several previous reports of the Commission in which cooperation with foreign services was discussed and the applicable legal framework within which cooperation with foreign services must take place. Chapter 4 describes the policy and practice of bilateral cooperation: which conditions does the MIVD use for entering into and maintaining bilateral cooperation relations?

with foreign services? In chapters 5 to 7 various forms of cooperation: data exchange, support and joint operations. Here too, the policy and practice within the MIVD are discussed. Multilateral cooperation is discussed in Chapter 8. Chapter 9 discusses cooperation with foreign services in the context of the mission in Afghanistan. The conclusions and recommendations of the Commission can be found in Chapter 10. A glossary is included at the end.

The report also contains an appendix setting out the entire legal framework for cooperation with foreign services. In addition, the Commission makes some suggestions to the legislator (available at www.ctivd.nl).

The Commission has also added a secret annex to this report. This is only accessible to the House of Representatives Committee for the Intelligence and Security Services. The secret annex goes into more detail about some activities, but the irregularities and inaccuracies that are included in it are also included in the public oversight report.

2 Design of the study

The Commission conducted this investigation on the basis of its supervisory task under Article 64 of the Wiv 2002. A similar investigation was conducted into the cooperation between the General Intelligence and Security Service (AIVD) and foreign intelligence and/or security services.

A separate supervisory report on this investigation by the AIVD was published in September 2009.

The Commission communicated its intention to initiate these investigations pursuant to Article 78 paragraph 3 Wiv 2002 to the Minister of the Interior and Kingdom Relations and the Minister of Defence respectively, and to the Presidents of the First and Second Chambers of Parliament on 27 September 2007.
the States General.

What did the research focus on?

The Commission has investigated how the MIVD generally gives shape to cooperation with foreign intelligence and/or security services. In doing so, it has tested whether cooperation with foreign services takes place within the frameworks set by law. In doing so, it has focused on the policy pursued and the practice of cooperation. In that context, the Commission has looked at various forms of cooperation that take place in the daily intelligence process.

The MIVD is divided into various departments. The Commission's investigation focused on a department that is primarily concerned with acquiring intelligence - the Secret Operations department - and two departments that are primarily concerned with the analysis and production of intelligence - the Intelligence and Counter Intelligence and Security departments. These departments frequently collaborate internationally. In addition, the Commission paid attention to both supporting and steering components within the MIVD that also play a role in maintaining contacts with foreign services, such as the External Relations Office. The investigation did not focus on international cooperation in the field of *sigint*.¹ The MIVD collaborates with a large number of foreign intelligence and security services. The Commission did not choose to focus the investigation in advance on cooperation with certain, pre-selected foreign services. In principle, cooperation with all foreign services of the aforementioned MIVD departments was included in the investigation.

This gives the Commission a broad picture of the various cooperation relationships that the MIVD maintains. The investigation also focused on cooperation in certain thematic and geographical areas of interest, such as piracy and Afghanistan. Cooperation in these cases covered a significant part of the total number of cooperation relationships. According to the Commission, these areas of interest therefore provide a representative picture of the international cooperation of the MIVD.

¹ This subject was discussed in supervisory report no. 28, regarding the use of Sigint by the MIVD, *Parliamentary Papers 112011/12*, 29 924, no. 74 (appendix) and supervisory report no. 38, regarding data processing in the field of telecommunications by the AIVD and the MIVD, *Parliamentary Papers /12013/14*, 29 924, no. 105 (appendix), available at www.ctivd.nl.

How was the research conducted?

In this investigation, the Commission examines the cooperation of the MIVD with foreign services in the period from the beginning of 2007 to the end of 2013. For this purpose, the Commission consulted the systems at the MIVD. The file investigation into the implementation of joint operations and support was limited to operations that started before 2012. In its investigation, the Commission also included a number of files from before 2007, insofar as the MIVD entered into new cooperation relationships with foreign services in these files or if the files related to important developments in the cooperation relationships. The file investigation was largely carried out at the three departments mentioned. File investigation was also carried out with regard to the supporting and steering components of the MIVD that play a role in international cooperation, such as the External Relations Office. Given the long lead time of the investigation and the large amount of research material, the Commission regularly carried out updates in the file investigation. In this way, it obtained as complete a picture as possible of the matter.

In addition to the file investigation, the Commission held 33 interviews with MIVD officials, including lawyers, liaisons, employees and managers of the External Relations Office and employees and managers of the three MIVD departments investigated.

Long lead time of the investigation The

Commission's investigation took (too) long and was repeatedly halted for long periods. This is primarily because the Commission had limited capacity during certain periods of the investigation and repeatedly had to give priority to other investigations. Another delaying factor was the extensive file investigation that was required.

The Commission is aware that due to this long lead time, a number of its findings have already been overtaken by new developments. The MIVD has informed it that the service has now taken measures in several areas in which the Commission has found irregularities or carelessness. The Commission considers this positive. It has not tested the adjustments in the working method after the investigation period, i.e. after 2013.

This report has therefore been overtaken in parts by recent developments within the MIVD. Nevertheless, the Commission considers it important to use this report to show the outside world how the MIVD has implemented cooperation with foreign services during the investigation period from 2007 to the end of 2013. The report provides a general interpretation of the theme of cooperation with foreign services. This theme - and in particular the pitfalls that exist in the area of cooperation between foreign services - has received a great deal of attention following the Snowden revelations.

Minister's response to investigation

The Commission completed the investigation by drawing up the report on 24 December 2014.

The Minister of Defence was given the opportunity to respond to the findings included in the supervisory report in accordance with Article 79 Wiv 2002. This led to a number of changes, after which the supervisory report was adopted on 10 June 2015.

3 In brief: context and framework

This chapter provides the relevant context of this report. It describes what the Commission has already published on the cooperation of the AIVD and/or the MIVD with foreign services (paragraph 3.1) and within which legal framework the cooperation with foreign services must take place (paragraph 3.2).

3.1 Context: previous reports on cooperation with foreign services

Previous report on cooperation

Cooperation with foreign services was the subject of research in a corresponding investigation by the Commission at the AIVD. A supervisory report on this investigation was published in September 2009.² The supervisory report (no. 22a) describes the legal framework for international cooperation and how this has been implemented in policy and practice within the AIVD.

The Commission criticised the lack of clear decision-making when entering into or intensifying cooperation relationships. According to the Commission, the AIVD must weigh this up for each foreign service on the basis of the cooperation criteria. The Commission also found bottlenecks and irregularities in the policy and practice of providing personal data and providing or receiving support. The Minister of the Interior and Kingdom Relations endorsed the Commission's positions, but also made some reservations.³ Where relevant to the findings on the MIVD (particularly with regard to the criteria for cooperation), this report refers to the conclusions from report 22a.

Previous report on signals intelligence

The MIVD's cooperation with foreign services in the field of *signals intelligence* (sigint) was discussed in the Commission's investigation into the use of sigint by the MIVD. A report on this investigation was published in December 2011 (no. 28).⁴ The Commission also examined the cooperation with foreign services in the acquisition of sigint, including the provision of raw and evaluated sigint to foreign services. The Commission found that the provision of raw sigint to foreign services in fact amounted to providing support through the use of a special power. The MIVD wrongly failed to request permission from the Minister of Defence for this.

² Supervisory report no. 22A on the cooperation of the AIVD with foreign intelligence and/or security services services, *Parliamentary Papers 112009/10*, 29 924, no. 39 (appendix), also available at www.ctivd.nl.

³ *Chamber Documents 112009/10*, 29 924, no. 39.

⁴ Supervisory report no. 28 on the use of Sigint by the MIVD, chapter 7.1.2, *Parliamentary Papers II 2011/12*, 29 924 No. 78 (appendix), available at www.ctivd.nl.

Previous report on data processing in the field of telecommunications The MIVD's cooperation with foreign services was also discussed in the March 2014 report on data processing in the field of telecommunications by the AIVD and the MIVD.⁵ This also concerned cooperation with foreign services in the field of sigint and the exchange of other data collections. The Commission noted that the MIVD exchanges collections of (raw) data in several close partnerships and trusts that foreign services respect human rights and act within their own legal framework. The Commission considered it desirable to investigate whether this trust is still justified and recommended that the Minister of Defence assess the cooperation relationships for transparency and further specify the considerations underlying the cooperation. The Minister adopted this recommendation.⁶

The Commission further established that the procedure for exchanging metadata collections with foreign services is lawful. The Commission also established once again that the MIVD provided support to foreign services without requesting permission from the Minister of Defence on a case-by-case basis. In response to the report, the Minister indicated that the procedure would be adjusted and that the subject would be included in a proposed amendment to the law.'

What is outside the scope of this report?

The current supervisory report addresses some of the above-mentioned subjects and some not. Cooperation with foreign services in the field of sigint and the exchange of other data collections fall outside the scope of this investigation.

You can read more about this in the above-mentioned reports nos. 28 and 38.

Evaluation of the Wiv 2002

The Commission for the evaluation of the Wiv 2002 (Dessens Committee) also paid attention to cooperation with foreign services.⁸ In its report published in December 2013, the Dessens Committee stated that it had taken note of the bottlenecks identified by the CTIVD and the services in the statutory regulation for providing support and of the lack of a regulation for submitting requests for support to a foreign service. In addition, the Dessens Committee noted that the cooperation criteria were not included in the law. The Dessens Committee concluded that the statutory framework in Article 59 deserves reconsideration and that, partly in light of recent discussions, further investigation should be carried out into whether the Wiv contains sufficient constitutional and democratic guarantees for cooperation with foreign services.

In response to the evaluation committee's report, the Cabinet indicated that the nature and intensity of cooperation with foreign services must be determined in part by certain cooperation criteria. The law must also provide sufficient framework and scope for this.

In addition, the Cabinet indicated that the exchange of bulk data with foreign services will be subject to a system of ministerial approval.'

Supervisory report no. 38, on data processing in the field of telecommunications by the AIVD and the MIVD, *Parliamentary papers 112013/14*, 29 924, no. 105 (appendix), available at www.ctivd.nl.

Parliamentary Papers 112013/14, 29 924, no. 105.

⁷ *Chamber Documents 112013/14*, 29 924, no. 105.

^a Evaluation of the Intelligence and Security Services Act 2002, Towards a new balance of powers and guarantees, *Parliamentary Papers 112013/14*, 33 820, no. 1, p. 117-119.

⁹ *Parliamentary Papers 112013/14*, 33 820, no. 2, p. 7.

Recent parliamentary debates

Cooperation with foreign services has since been frequently discussed in debates in the First and Second Chambers of the States General. This has been elaborated in several motions of parliament. In an adopted motion by members of the House of Representatives Schouw (D66) and Segers (CU), the government was requested to further elaborate on the cooperation criteria.¹⁰ In an adopted motion by Schouw, the government was requested to only allow the AIVD and the MIVD to exchange (meta)data with foreign services after the minister concerned has given permission to do so." The Commission was requested to discuss the implementation of these motions in its annual report. On 28 August 2014, the Commission indicated to the House that it would be happy to do so. It has promised to discuss in this report how the MIVD fulfils the cooperation criteria. It will then conduct a short-term study every other year until 2020, in which it will randomly assess the policy and practice of the AIVD and the MIVD in the area of cooperation relations.

3.2 Brief legal framework

The Commission describes the legal framework for cooperation with foreign services in the legal annex to this report. In this annex, the Commission also makes some suggestions to the legislator to consider whether the provisions in the current Wiv 2002 need to be revised. In this paragraph, we will only briefly discuss the necessary safeguards for personal privacy.

The MIVD must observe the following privacy guarantees when collaborating with foreign services:

- Article 59 Wiv 2002 contains a general duty of care for cooperation with eligible foreign services. Whether a foreign service is eligible for cooperation and what forms that cooperation may take depends on the extent to which the cooperation criteria as described in the legislative history are met.¹² The criteria are: respect for human rights and the democratic embedding of the foreign service; the tasks, professionalism and reliability of the foreign service; the desirability of cooperation in the context of international obligations; the promotion of task performance; and the degree of reciprocity (*quid pro quo*). In Chapter II of the legal appendix to this report you can read an elaboration of these cooperation criteria and considerations on the desirability of including them

criteria in the Wiv 2002.

- In addition, the Wiv 2002 explicitly regulates the *provision* of data to foreign services in the event that such provision takes place in the context of the performance of the foreign service's own tasks (Article 36 Wiv 2002) or in the context of the interests of the foreign service concerned (Article 59 Wiv 2002). In the first case, the provision contributes to the service's own ongoing investigation. Since in the second case the interests of the foreign service are leading, Article 59 contains additional requirements: such provision only takes place if the interests to be served by the foreign service are not incompatible with the interests to be served by the Dutch service and if proper performance of the Dutch service's tasks does not oppose the provision (see Chapters IV and V of the Legal Annex).

¹⁰ *Parliamentary Papers* 112013/14, 30 977, no. 89.

¹¹ *Parliamentary Papers* 112013/14, 30 977, no. 96.

¹² *Appendix to the Proceedings* 112004/05, no. 749 and *Parliamentary Papers* // 1996/97, 25 418, no. 1, p. 2. The legislative history of the Wiv 2002 refers to this piece: see *Parliamentary Papers* I/2000/01, 25 877, no. 14, p. 63.

- A distinction also applies to the *collection* of data between the use of powers in the context of one's own task performance (joint operation, where the information contributes to MIVD's own ongoing investigation) and the use of powers in the interest of the foreign service (support). In the case of support, the same additional requirements apply as mentioned above, again because of the leading interest of the foreign service (see chapters IV and V legal appendix).
- Other aspects of cooperation are not explicitly regulated in the Wiv 2002. For example, there are no provisions on receiving data, on making requests for support to foreign services or on carrying out joint operations. This does not mean that such activities can simply take place.
- The guarantees for the protection of personal privacy are furthermore located in a number of general and specific legal requirements. These requirements apply to the processing of data, the provision of personal data and the use of (special) powers. The requirements also apply to activities that are carried out in the context of cooperation with foreign services.

13 The law defines processing of data as any operation or set of operations which is performed upon data, including in any case the collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data; Article 1 sub f Wiv 2002.

4 Bilateral cooperation with foreign services

This chapter discusses the policy on bilateral cooperation with foreign services and how this is dealt with in practice within the MIVD. First, you will read which conditions the service uses for entering into bilateral cooperation relations with foreign services (paragraph 4.1). Subsequently, paragraph 4.2 discusses the practice of cooperation agreements. Paragraph 4.3 describes how the service maintains and adjusts cooperation relations. Finally, paragraphs 4.4 and 4.5 describe the roles played by the External Relations Office and the defence attachés and liaisons in bilateral cooperation.

4.1 Entering into a partnership

The need for international cooperation has grown considerably in the past decade. As international threats increase, a broader need for intelligence on a greater number of subjects arises. International cooperation is almost self-evident in this context.

At the same time, intelligence and security services work together within a sometimes complex field of interests.

The Commission notes that the MIVD is broadening its horizons in its cooperation with foreign services. Previously, the MIVD mainly worked with more traditional cooperation partners with whom cooperation relations had existed for a long time. Sometimes new cooperation relations were entered into, but these were mostly intelligence and security services of countries that are members of NATO, with a few exceptions. In recent years, the MIVD has also focused on other foreign intelligence and security services.

When entering into a cooperation relationship with a foreign service, the MIVD must consider whether and to what extent that service is eligible for cooperation. This depends on the extent to which the applicable cooperation criteria are met. As also described in report 22a, this must be assessed at the level of the service management."

Policy for entering into a cooperation relationship Until recently, there was no concrete internal policy within the MIVD for initiating cooperation with a foreign intelligence and/or security service. When entering into a cooperation relationship, each case was acted upon according to the circumstances. The Commission notes that decision-making on whether or not to enter into new cooperation relationships has not taken place as such, has not always taken place in the same way and has not taken place on the basis of predetermined cooperation criteria.

In May 2012, the MIVD management approved a proposal from the External Relations office. The proposal describes a methodology in broad outline. A weighting note is drawn up for each partner service in which it is assessed whether cooperation is desirable, which forms of cooperation are possible and which conditions apply. The weighting note must make clear to what extent a foreign service meets the cooperation criteria and what this means for the way in which the MIVD can cooperate with this service. The weighting note is submitted to the MIVD management for approval. The methodology is further elaborated by a working group consisting of representatives of the relevant departments, the External Relations office and the MIVD legal service. The Commission notes that the working group in question met several times after May 2012 to arrive at a new working method. At the time of closing the investigation, no concrete plan had yet been drawn up.

The Commission considers it to be careless that, until May 2012, there was no decision-making procedure for entering into cooperation relations with foreign services.

Especially since the MIVD could have taken into account the Commission's recommendations in this context to the AIVD in report 22a.

Preliminary weighting notes The Commission notes that by the end

of 2013 no notes had (yet) been drawn up in which, on the basis of the cooperation criteria, an assessment was made as to whether the partner service in question qualifies for cooperation. With regard to the new cooperation relationships that have been explored since May 2012, advice on cooperation has been drawn up by the External Relations Office.

These recommendations mainly focus on the (operational) need for the MIVD to cooperate and the possible political risk of failure in the event of cooperation.

It is always advised to proceed with exploratory discussions and to make a decision at a later time on the basis of the cooperation criteria. The Commission understands that the cooperation is explored to some extent before the MIVD makes a decision. However, it does consider it important that the assessment of the extent to which the services concerned meet the cooperation criteria and what the limits are to that cooperation with those services, still takes place in writing, before there is any substantive cooperation with these services.

The Commission recommends that the MIVD actually apply the decision-making procedure for entering into cooperation relationships with foreign services, in which the fundamental assessment of the extent to which the cooperation criteria set are met is made per individual foreign service and at the level of the service management.

The Commission notes that a situation may arise in which the MIVD is given the opportunity to cooperate (operationally) with a foreign service in a specific case in the short term.

Such a possibility may arise *ad hoc*, without the intention of structural cooperation. Furthermore, major interests may be involved and there may be a certain urgency. If there is no cooperation relationship with the foreign service in question at that time, it may be difficult for the MIVD to make a thorough and complete assessment within a sometimes short period of time of the extent to which the foreign service meets the set cooperation criteria and thus of the forms of cooperation that are permissible. In the opinion of the Commission, such incidental cooperation must be preceded by a reasoned decision by the service management and explicit permission from the Minister of Defence.

In addition, the Commission is of the opinion that the MIVD must prevent incidental cooperation from setting a precedent and becoming the standard rather than the exception. In the event of future cooperation with the foreign service in question, the MIVD must still consider whether the foreign service meets the cooperation criteria and which forms of cooperation are permissible.

4.2 Cooperation agreements with foreign services

The MIVD works bilaterally with a large number of foreign services. In most cases, the various cooperation relationships with foreign services are based on a written agreement. The MIVD has concluded several cooperation agreements with a number of foreign services."

The Wiv 2002 does not stipulate that cooperation with foreign services takes place on the basis of an agreement. Legally, the MIVD is therefore not obliged to conclude an agreement before cooperation with a foreign service is permitted. However, the MIVD is bound by an Instruction from the Secretary-General of the Ministry of Defence.¹⁵ states that international military cooperation preferably takes place on the basis of cooperation agreements.¹⁶ The Ministry of Defence must assess these cooperation agreements in advance on the basis of operational, policy and legal aspects. They are not published.

Different types of cooperation agreements Cooperation

agreements with partner services can take different forms. For example, they can be an *agreement*, *protocol*, *letter of intent* or, most commonly, *memorandum of understanding* (MoU). In practice, it makes little difference which form is used. Each cooperation agreement contains non-binding agreements, which set out the practical and substantive rules that both parties intend to adhere to in the bilateral cooperation.

In terms of content, there are major differences between the agreements that the MIVD concludes with partner services. Roughly speaking, different types of agreements can be distinguished. The most common type is the *security agreement*. In this, the desire for cooperation is generally stated, and the rules regarding the secure exchange of classified data. An *intelligence agreement* offers more substance. In this, agreements are made about the subjects in respect of which cooperation takes place, for example a joint military mission, and about the scope thereof. Furthermore, there is the *operational cooperation agreement* that focuses on the use of special powers. In addition, there are *technical cooperation agreements* in which the mutual use of technical resources is usually regulated in a narrowly defined and detailed manner.

¹⁵ In addition to the cooperation agreements between foreign services, there are agreements or treaties that have been concluded between the respective Ministries of Defence and that may also (partly) apply to the MIVD. These agreements or treaties will not be considered further here.

¹⁶ Designation SG A/946, formerly Designation SG V/10.

Concluding cooperation agreements Cooperation agreements are often concluded when entering into a cooperation relationship with a foreign service or as the cooperation develops and takes on other forms. In practice, the Legal Affairs department of the MIVD prepares the draft cooperation agreement, together with the department within which the initial need arose.

The Legal Affairs department ensures coordination of the draft cooperation agreement with the Legal Affairs Directorate and the Office of the Secretary General of the Ministry of Defence. The External Relations office is responsible for contact with the foreign service regarding the

cooperation agreement is maintained and the precise text of the agreement is negotiated. This process can take a long time, especially when entering into a cooperation relationship with a relatively unknown foreign service. The MIVD indicates that in such cases it only maintains protocol contact with the foreign service in question and only proceeds with substantive cooperation after the cooperation agreement has been signed. In practice, however, this is adhered to less strictly. In some cases, cooperation takes place even though there is (as yet) no valid cooperation agreement. In a few cases, this concerns operational cooperation. If there is no cooperation agreement yet, the MIVD must coordinate the cooperation with the Secretary-General of the Ministry of Defence on the basis of the Instruction. In the case of politically highly sensitive cooperation, the MIVD must obtain written permission from the Minister.

The value of cooperation agreements From a legal perspective, it is particularly important whether the MIVD has made an explicit assessment, based on the cooperation criteria, of whether the foreign service in question qualifies for cooperation (see also Chapter II of the Legal Annex). The presence of a cooperation agreement does not mean that the MIVD has made this assessment and in that sense has limited value for the protection of personal privacy that the Wiv 2002 aims to guarantee.

After the cooperation agreement has been concluded, it is stored in the archives of the MIVD.

Previously, however, the MIVD lacked central archiving and a clear overview of (still) valid cooperation agreements. At the end of 2011, the management of the cooperation agreements was placed with the Legal Affairs department and since then, that department has been working on setting up a database in which information about the cooperation agreements is stored. The Commission sees this as a positive development.

The Commission also notes in this context that the MIVD also cooperates with foreign services that do not *wish to* conclude a cooperation agreement. In such cases, the MIVD submits the cooperation for approval to the Secretary-General of the Ministry of Defence. With a view to completeness and care, it is advisable to also report these cooperation relationships and the absence of a cooperation agreement in the database. This is not yet standard practice.

¹⁷ Previously, this task was assigned to the External Relations office. At the end of 2011, it was decided to transfer this task to the Legal Affairs department, which specifically hired a legal officer for this purpose.

4.3 Maintaining and adjusting a collaborative relationship

The duty of care of the director of the MIVD in the field of international cooperation concerns not only the assessment of whether a foreign service is eligible for cooperation, but also the maintenance of connections with those (eligible) foreign services. On the one hand, this implies that the director is committed to ensuring that the existing cooperation relationships with foreign services are maintained in any case and further developed where appropriate. On the other hand, this requires a repeated assessment of whether the foreign services in question are still eligible for that cooperation.

The policy for intensifying or dismantling cooperation relations The Commission notes that until recently the MIVD had no concrete internal policy for intensifying or dismantling cooperation relations with foreign services. This shortcoming can be remedied by the methodology of drawing up weighting notes and continuously updating them, discussed in Chapter II of the legal framework. The management of the MIVD approved this methodology in May 2012. The weighting notes must use the cooperation criteria to assess whether a foreign service is eligible for cooperation and which forms of cooperation are permitted under which conditions.

The Commission notes that this is not, and should not be, a static process. As the cooperation relationship with a foreign service continues and changes, the MIVD can always adjust its assessment of the service in question. This must always take place on the basis of the generally applicable cooperation criteria, motivated and at the right level. In this way, the MIVD can make a careful and equal assessment with regard to the various foreign services. It can also determine whether the cooperation relationship can develop further or should be phased out.

The Commission found in its investigation that this methodology has not yet been applied to existing MIVD collaboration relationships. When the investigation was concluded, the service was considering catching up by drawing up weighting notes for foreign services with which it already collaborates. No concrete plan has yet emerged from this.

The Commission recommends that the MIVD actually apply the decision-making procedure for intensifying or restricting cooperation relations with foreign services, in which the fundamental assessment of the extent to which the set cooperation criteria are met is made per individual foreign service and at the level of the service management. This is also in light of the ministerial commitments made in response to supervisory report no. 38."

The practice of intensifying or dismantling cooperation relationships The Commission notes that the individual offices and teams of the departments investigated generally have a clear idea of which foreign services and in which areas cooperation would provide added value for their own ongoing investigation. For most offices and teams, the cooperation relationships are reasonably stable and long-lasting. At the same time, the Commission notes that cooperation with foreign services that are less obvious to the offices and teams in question or with which less experience has been gained is also being explored. In general, if an office or team approaches a foreign service several times in a particular area and this does not immediately yield anything, the possibility of cooperation with that service is abandoned.

In their research, the individual agencies and teams consider whether it is desirable to intensify or reduce the relationship with a foreign service within a specific area of focus.

Some offices or teams periodically reflect on this. The Commission notes that such decisions to follow a certain course in cooperation with a foreign service are often submitted to or discussed with the department management. However, it is not customary to record the decision-making and the underlying considerations. The Commission does see the importance of this. It considers it advisable that this be included in the accountability line between the offices or teams and the MIVD management.

Maintaining connections with foreign services requires, apart from the choices of individual offices and teams, a certain degree of broader management. Within the MIVD, various initiatives have been developed for this, both service-wide and within the individual departments, with the aim of a more strategic and targeted policy of international cooperation.

In this way, work has been done to maximize the flow of information from foreign services by dealing more specifically with the response to requests for information and the provision of own intelligence products. In addition, clearer management from the MIVD service management has been provided by setting up strategic management meetings that (also) focus on cooperation with foreign services.

The role of the *quid-pro-quo balance* The

Commission has also found that various initiatives have been developed to gain a better insight into the *quid-pro-quo balance* in the cooperation relationship with (the most important) partner services across the service, so that the MIVD can make more strategic choices and achieve a more targeted exchange of information with partner services. In this respect, it is desirable that not only the interests of the team, office or department are served, but the MIVD as a whole. However, it remains difficult to develop a workable, comprehensive methodology with which the service can maintain and provide insight into the *quid-pro-quo balance*. The Commission notes that, moreover, there is no central body within the MIVD that maintains an overview of the cooperation relationships. This role has been formally assigned to the External Relations Office within the MIVD, but in recent years it has actually been given substance within the individual departments of the MIVD. The Commission will discuss the role of the External Relations Office in more detail in paragraph 4.4.

In order to enable management of the cooperation with foreign services, it is important, in addition to the *quid-pro-quo balance*, to have insight into how the various offices and teams within the various departments of the MIVD cooperate with foreign services, how this cooperation develops, where problems or bottlenecks occur and where there are wishes for change or opportunities for expansion. In the course of the research period, this was generally given more and better substance within the MIVD, including in the annual planning and reporting of bilateral consultations and in progress reports from the various offices and teams.

The planning of bilateral consultations and the overview of the *quid-pro-quo balance* Within the Intelligence department, an annual planning is used for bilateral consultations with foreign services. For each bilateral consultation, it is indicated why the team wishes to hold a consultation and about what. The planning is drawn up department-wide and provided to the management of the MIVD. The External Relations office is included in the proposed planning.

If in the meantime a team feels the need to hold a bilateral consultation, the team will coordinate this with the department management and then submit it for approval to the deputy director of the MIVD. The Counter Intelligence and Security department intends to work in a similar way.

A report is drawn up of each bilateral consultation with a foreign service. The report indicates, among other things, what was discussed in terms of content, what data was shared and, in many cases, what the MIVD employees present considered to be the value of the bilateral consultation. The reports are submitted for approval to the relevant department management. The reports of the Intelligence and Counter-Intelligence and Security departments are (partly) submitted to the provided by the External Relations Office.

During the investigation period, there were two joint teams with the AIVD. The Commission has found that reports of bilateral consultations with foreign services of these joint teams are in many cases stored exclusively in the AIVD systems and are not available at the MIVD. As a result, hardly any information was found in the MIVD systems about certain collaboration relationships, while the collaboration takes place from the joint team and therefore also on behalf of the MIVD. The discussions held by the Commission have shown that it is also possible that documents from a joint team are archived exclusively at the MIVD.

In the Commission's view, these situations are undesirable. It considers it important that the cooperation of the joint teams with foreign services is transparent to both services.

The Commission recommends that the MIVD ensure that this (still) happens.

The Commission notes that the cooperation with foreign services is also reflected in the progress reports that have been drawn up every four months since 2012 by the (counter-)intelligence teams. The reports are submitted to the management of the MIVD and also made available to the External Relations office. In the reports, the teams discuss, among other things, the extent to which the cooperation with foreign services has contributed to the team's investigative objectives. The Secret Operations department also (partially) accounts to the management of the MIVD for joint operations with or support of foreign services in reports on the progress of these activities.

Who has the overview of the *quid-pro-quo* balance?

The Commission concludes at the conclusion of its investigation that it remains difficult for the MIVD to draw up a service-wide (quantitative and qualitative) *quid-pro-quo balance sheet* of the cooperation relationships. The lack of a central body that is able to maintain an overview of the cooperation relationships contributes to this. The Commission further concludes that there is generally sound reporting of the cooperation with foreign services, at least where it concerns substantive discussions and data exchange with foreign services. According to the Commission, however, reporting is also necessary on the resulting choices that are made within the departments in the cooperation with foreign services and the arguments that underlie them. Sound reporting is essential to be able to make the cooperation relationship across the entire breadth of the MIVD transparent. It is also indispensable for the necessary guidance that is required in the duty of care for maintaining connections with relevant foreign services.

4.4 Role of the External Relations Office

Formal role

The External Relations Office is responsible for managing, coordinating and facilitating the (inter)national contacts of the MIVD and for initiating and coordinating policy aimed at maintaining favourable (inter)national relations and aimed at securing the information position for the correct performance of tasks by the MIVD. This means that the implementation of the duty of care of the head of the service for maintaining cooperative relations with foreign services within the MIVD is (partly) assigned to the External Relations Office. This office thus has an important task in (co-)developing, maintaining and guaranteeing the quality of these cooperative relations. In this context, it is important that the External Relations Office has a complete picture of the cooperation with foreign services. If necessary, the service can then adjust the cooperative relations on the advice of the External Relations Office.

The MIVD can also monitor the quality of the collaboration in this way.

Role in practice

The Commission notes that in practice the External Relations Office mainly plays a facilitating role. For example, the Office coordinates incoming and outgoing visits to and from foreign services, and a representative of the Office is sometimes present at these visits. The Office also acts as a point of contact for foreign liaisons stationed in the Netherlands and for defence attachés abroad (see paragraph 4.5). Individual teams and offices that

cooperation with foreign services can contact the External Relations Office for further information

about the services concerned or to seek advice from the office. Occasionally, the office provides unsolicited advice. The Commission has also found that the External Relations Office has initiated policy in a few cases. An example is the proposal discussed in paragraph 4.1 to use weighting notes to determine whether a foreign service is eligible for cooperation.

Dependence on cooperation from others

The External Relations Office is partly dependent on the provision of information by and the cooperation of others in the performance of its tasks. For example, there is a standing agreement to provide the External Relations Office with (partial) reports of bilateral consultations of the departments that are primarily concerned with the analysis and production of intelligence. In addition, the External Relations Office is intended to be informed about matters that affect cooperation with foreign services. The Commission has found in its investigation that the teams and departments it investigated have not always been (or are not) prompt in informing the External Relations Office about that cooperation. A frequently used argument for this is the internal compartmentalisation used within the MIVD."

The Commission does note an improvement in this respect, but it is not yet automatic that the External Relations Office is involved in or (adequately) informed about decision-making or developments that affect cooperation with foreign services. The Commission believes that, given the formal role of the External Relations Office, such a matter of course should exist. In many cases, compartmentalisation need not be an obstacle. This is not so much about the substantive operational details, but rather about general information such as the long-term agreements made with the foreign service, the reasons for cooperation and the interests involved, any problems encountered in cooperation and the quality and quantity of information obtained or provided to the foreign service.

¹⁹ Compartmentalization refers to limiting the acquisition of information on the basis of the principle from 'need to know' through organizational and system technical measures.

Advising service management

The External Relations Office also has an advisory role, in line with the implementation of the duty of care. Where necessary, it advises the service management on the adjustment of the cooperation with foreign services as prescribed by the policy within the MIVD. For this purpose, it is necessary that the office has sufficient insight into the intensity of and the balance in the cooperation relationship with those services. On the other hand, it is important that the External Relations Office acts sufficiently (proactively) and ensures that the service-wide cooperation policy is complied with.

A stronger role for the External Relations Office in this context can lead to greater uniformity in the cooperation of the various teams and offices with foreign services. The Commission notes that this role of the External Relations Office is not sufficiently implemented in practice.

4.5 Role of defense attachés and liaisons

Tasks and management of defence attachés

When carrying out its tasks, the MIVD can make use of the network of defence attachés who are stationed at Dutch embassies abroad. The task of defence attachés is to collect information that may be of importance to the political and military leadership of the Ministry of Defence, and then report on this. This job description also allows for the collection of information for the performance of tasks by the MIVD.

The defence attachés are managed by the Soudchef International Military Cooperation of the Ministry of Defence and on site by the Chef de Poste of the embassy of the Ministry of Foreign Affairs. In addition, they can receive orders from teams of the MIVD to gather information 'in an open manner'. This concerns meeting a general need for information. Defence attachés are not permitted to use special powers. In August 2011, a framework was drawn up which addresses, among other things, the tasks, responsibilities, working methods and management of the defence attachés.

Part of the work of defence attachés that takes place for the MIVD can also be (co-)establishing and maintaining contacts with foreign services. This must always take place in consultation with and on the advice of the External Relations office. Defence attachés have a protocol or facilitating role in such contacts and are not involved in concrete intelligence exchange with foreign services.

Tasks and management of liaisons

In addition to the possibility of using the network of defence attachés, the MIVD has stationed liaisons in several countries. The liaisons are also stationed abroad at the respective Dutch embassies and have been made known as such to the authorities in the country concerned. A covenant has been concluded with the Ministry of Foreign Affairs in which the position of the liaisons in this context is given substance.

Unlike defence attachés, liaisons primarily function as intermediaries in the MIVD's relationship with foreign services. Their primary task is to promote cooperation with foreign services (and other relevant institutions). This also involves the exchange of intelligence, for which prior consultation with and approval of the MIVD is required.

In addition, the liaisons have a task in locally acquiring and reporting information relevant to the MIVD. Liaisons, in comparison to defense attachés, have their own task and scope in cooperation with foreign services to fulfill that task partly according to their own insight.

Another important difference is that the liaisons are part of the MIVD.

Liaisons of foreign services are also stationed in the Netherlands. The External Relations Office is the first point of contact for these liaisons. Each liaison stationed in the Netherlands is issued a code of conduct drawn up jointly by the MIVD and AIVD. This contains rules that determine what the liaison is permitted to do on Dutch territory. If a liaison wants to carry out operational activities, permission from the Minister of BZK²⁰ and involvement of the MIVD are absolute requirements. You can read more about the secret operation (without the cooperation of the Dutch services) of foreign services on Dutch territory in Chapter III of the legal framework in the appendix.

²⁰ As far as activities at locations used by the Ministry of Defence are concerned, this is the Minister of Defence.

5 Exchange of data

The MIVD exchanges data with a large number of services on all sorts of subjects. The data that is exchanged varies considerably. For example, it can involve very general intelligence reports on specific themes, more in-depth analyses of phenomena, but also very specific information on specific persons or organisations.

The vast majority of data exchange takes place by sending and receiving data via secure connections or placing and transferring data on secure networks that are accessible to multiple services simultaneously. Also important is the (verbal) exchange of information, for example, when conducting bilateral visits, the contacts that the liaisons maintain with the various services in their remit and attending multilateral meetings.

In all these forms of data exchange, the MIVD must always ask itself whether the provision of that specific data to that specific service(s) is permitted in that specific case. The opposite may also apply. In some cases, the MIVD must ask itself whether it can afford not to provide certain data. When using received data, the MIVD must also ask itself whether this is permitted.

The legal framework in the appendix discusses various forms of data exchange with foreign services and the guarantees that apply in this regard according to the Wiv 2002. This chapter focuses on the internal policy of the MIVD and the practice of the concrete provision and receipt of data. First, the policy of the MIVD regarding the provision of general data and how this is implemented in practice is discussed (paragraph 5.1).

Subsequently, paragraph 5.2 discusses the provision of personal data and paragraph 5.3 discusses the additional requirements for the provision of (personal) data. Paragraph 5.4 discusses how the MIVD deals with data that it receives from foreign services. Finally, cooperation in security investigations is discussed (paragraph 5.5).

The Commission notes that this chapter does not concern the provision of bulk data to foreign services. This topic was discussed in the supervisory report on data processing in the field of telecommunications by the AIVD and the MIVD.²¹ The government has indicated that ministerial permission is required for the provision of bulk data.²²

5.1 Provision of general data

The MIVD's internal policy uses a number of general assessment criteria for the provision of data. For example, before providing the data, the service must determine whether the intended cooperation with the foreign service is in accordance with the law and falls within the scope of the cooperation agreement. The service must also determine whether the data provision concerns general data or personal data. A different regime applies to the provision of personal data (see paragraph 5.2).

²¹ Supervisory report no. 38, on data processing in the field of telecommunications by the AIVD and the MIVD, Chapter 5, *Parliamentary Papers 112013/14*, 29 924, no. 105 (appendix), available at www.ctivd.nl.

²² *Parliamentary Papers 11 2013/14*, 33 820, no. 2, p. 7.

Internal policy: prioritisation of cooperation relationship

The policy links the extent to which (general) data is provided to a foreign service to the prioritisation that the service in question receives within the MIVD. By setting priorities, the limited available capacity can be optimally focused on the foreign services that can make the most high-quality contributions to the information position of the MIVD, according to the policy. A distinction is made between primary, secondary and tertiary partner services. A primary partner is involved if it can make a substantial contribution to MIVD products.

This category mainly includes foreign services that cooperate in the context of a crisis management operation. Secondary partner services can make an important contribution to the information position of the MIVD. Tertiary partner services exist insofar as foreign services can make a limited contribution to MIVD products or if the MIVD itself does not see any concrete added value in the cooperation but maintains the cooperation for other reasons.

The depth of the (general) data provided also depends, according to internal policy, on the nature of the cooperation relationship with a foreign service. With foreign services with which there is no relationship of trust, only data based on open sources are shared. The provision of data then mainly has a protocol character and no substantive added value for the MIVD. With foreign services with which there is a relationship of trust, data based on closed or secret sources are shared, according to internal policy.

A distinction is made between data for which the source is not indicated and data for which this is indicated in general terms (for example *sigint or humint*).

Internal policy: provision on request or unsolicited The internal policy also

mentions the possibility of providing data on request of a foreign service and the possibility of providing data unsolicited. In the first form, the provision is based on a request, which is called a *request for information* (RFI) within the MIVD. The rule here is that the MIVD will not actively acquire the requested information, but will use information that is already available and preferably already 'on the shelf' in a report. According to the internal policy, the unsolicited provision of data to foreign services is becoming increasingly common. The growing importance of this is due in part to the increasing cooperation in the context of crisis management operations, greater dynamism in the cooperation relationships, the political pressure for cooperation and the development of technical possibilities.

Internal policy: bilateral consultation

The internal policy also addresses the provision of data to foreign services during bilateral consultation. A report must be drawn up of each bilateral consultation. The data received or handed over during the bilateral consultation must be registered. It is expressly prohibited to hand over (drafts of) MIVD products or parts thereof in a personal capacity.

Internal consultation: granting authority According

to the internal operating policy, the department head is authorised to provide general data to foreign services. The department head is also responsible for the substantive quality of the data. If the department head issues a threat report, for example indications that a certain attack will take place, he must inform the director of the MIVD about this. The Defence Mandate Regulation Wiv 2002 and Wvo23 and the MIVD Sub-Mandate and Authorisation Decree 2009²⁴ also provide two exceptions to the main rule contained in the operating policy that the department head is (mandated) authorised to provide general data to foreign services. The authority is reserved for the Minister of Defence if data is provided in the context of the execution of its own tasks (Article 36 Wiv 2002) on a subject of a politically sensitive nature.²⁵ The director of the MIVD is authorised if data is provided in the interests of the foreign service (Article 59 Wiv 2002).²⁶

Practice: two comments The above-

mentioned aspects of the MIVD's internal policy are clearly reflected in the practice of the provision of general data by the three departments investigated. The Commission makes two comments in this regard based on the results of the investigation it conducted.

Note 1: provision of data in the interest of the foreign service The first note concerns the unsolicited provision of data to foreign services.

This occurs regularly and in many cases relates to (counter) intelligence reports that have been produced for the MIVD's customers, for example the Commander of the Armed Forces or the Prime Minister, and that can also be useful to certain foreign services. Such reports are shared with foreign services to increase the MIVD's visibility in the international field and to contribute to common objectives, such as supporting a crisis management operation or the international fight against terrorism and piracy. This provision does not contribute specifically to its own ongoing investigation and is mainly done in the interest of the foreign service (Article 59 Wiv 2002).

In the MIVD Sub-Mandate and Authorisation Decree 2009, the authority to provide general data *in the interest of the foreign service* is reserved for the Director of the MIVD.

The Commission notes that this is often not followed in practice. The MIVD wrongly does not regard the data provision as provision on the basis of Article 59. In practice, decisions to provide such data are often made at the level of the department head or the level of the office or team head. The Commission considers it careless that the MIVD Sub-Mandate and Authorisation Decree 2009 is not followed. However, it notes that insofar as it concerns the provision of general data and not personal data, there is no question of an infringement of personal privacy. From that perspective, the Commission therefore does not require a restriction of the mandate. It is up to the Director of the MIVD to assess whether the restriction of the mandate is (still) desirable in such cases.

²³ Government Gazette 16 August 2004, no. 155, p.7.

²⁴ Government Gazette 11 May 2010, no. 7168.

²⁵ Article 4 sub c of the Defence Mandate Regulation Intelligence and Security Services Act 2002 and the Security Investigations Act.

²⁶ Article 3 paragraph 2 sub g of the MIVD Sub-Mandate and Authorisation Decree 2009.

Note 2: provision of data in the context of one's own task performance Secondly, the Commission has found that the decision to provide general data to a foreign service in the context of one's own task performance, for which the head of department has been mandated, is in some cases not taken by the head of department but at a lower level. This is certainly the case regularly, especially when it concerns the provision of data in the ongoing operational process, for example in bilateral consultations or to answer questions from foreign services. Only when there is reason to do so, for example in the case of politically sensitive data, is coordination sought with the department management. If the MIVD provides formally established documents such as (counter-)intelligence reports, it usually acts in accordance with internal policy. The head of department or his deputy must sign for the provision of such documents.

The Commission considers it careless that the MIVD does not follow internal policy in certain cases.

Here too, however, she notes that the protection of personal privacy is not at stake when providing general data to foreign services. This therefore leaves room to place such decisions at a lower level, if there is a need for this from the workability of the operational process. It is up to the management of the MIVD to make that assessment. The Commission does consider it important from the point of view of due care that the MIVD updates or adjusts the policy or ensures compliance with that policy.

policy.

5.2 Provision of personal data

The distinction made in the law and legislative history between general data and personal data is followed in the internal policy of the MIVD. A different regime applies to the provision of personal data to foreign services than to the provision of general data (see paragraph 5.1).

Internal policy: general The

internal policy of the MIVD states that additional regulations apply to the provision of personal data. The policy refers here to articles 40 to 42 Wiv 2002.

This includes the provision that a service must in principle provide personal data in writing and keep a record of this provision. It is also stated that a separate procedure must be followed for the provision of personal data, in which the Legal Affairs department must be involved. The decision to provide personal data lies with the director of the

MIVD.

It is also stated that the provision of personal data to foreign services will not take place if the person can be prosecuted in that country. A short caption indicates that this restriction applies exclusively to personal data of Dutch citizens.

Internal policy: definition of personal data too limited The internal policy of the MIVD states that personal data within the meaning of the Wiv 2002 only applies if they are personal data of an individual who is (or has been) the subject of an investigation by the MIVD. The Commission refers to Article 1 sub e Wiv 2002, which states that personal data are data relating to an identifiable or identified, individual natural person. Such data are not limited to persons who are (or have been) the subject of an investigation by the MIVD, but also concern other persons who are (or have not yet been) the subject of an investigation. The Commission considers the description of personal data in the internal policy of the MIVD to be too limited. It recommends that the MIVD adjust the policy in accordance with the legal definition of personal data.

Internal policy: too little room for cooperation criteria In its policy on the provision of personal data, the MIVD does not distinguish between foreign services that meet the cooperation criteria and foreign services for which this is doubtful. In its previous report on the cooperation of the AIVD with foreign services, the Commission assessed the AIVD's policy on this point.

The AIVD policy is that the provision of personal data to such 'risk services' does not take place and that this can only be deviated from in very exceptional cases. The Commission has found that this policy is in line with the law and the legislative history of the law. It is advisable that the MIVD also formulates a policy ²⁷ She considers it regarding the provision of personal data to foreign services in respect of which it can be doubted whether they meet the cooperation criteria. The Commission recommends that the MIVD pay explicit attention to the guarantees laid down in the law and described in paragraphs V.ii and V.iii of the legal framework in the appendix. It also recommends that a written motivation obligation be included in the new policy to be drawn up.

Practice: positive image of the provision of personal data In

its investigation, the Commission found that the provision of personal data to services for which there is no doubt as to whether they meet the cooperation criteria and with which there is intensive cooperation in certain areas occurs frequently. The Commission found no irregularities in this context, except in the case described at the end of this paragraph.

Practice: hardly any personal data provided to questionable foreign services During the investigation period, the MIVD mainly provided general data to foreign services in respect of which it is doubtful whether they meet the cooperation criteria that were used during the investigation period. In its investigation, the Commission only came across a few cases in which personal data were provided to such services. The considerations that the MIVD made in this regard were not recorded. The Commission found no indications that the provision was unlawful. However, the Commission notes that the MIVD wants to seek further cooperation in certain areas with services in respect of which it is doubtful whether they meet the cooperation criteria. In the event of (further) cooperation in such areas, for example combating terrorism or piracy, there may quickly be (an increase in) the exchange of

personal data.

²⁷ Supervisory report no. 22A, on the cooperation of the AIVD with foreign intelligence and/or security services, chapter 7.3, *Parliamentary Papers 112009/10*, 29 924, no. 39 (appendix), available at www.ctivd.nl.

Practice: risks of providing personal data via liaison

The Commission has also found that in a few cases a team has asked a liaison to make inquiries with foreign services about specific incidents concerning certain persons and organisations abroad. These also concerned foreign services for which it is doubtful whether they meet the cooperation criteria. In these cases, personal data were provided to the liaison. The Commission has not established whether the liaison also provided the personal data in writing or verbally to the foreign services concerned. It does not rule this out. Nor does it rule out that such a method of providing data has occurred more often than in the cases it has established. The liaisons are substantively managed by the (counter-)intelligence teams. There is direct contact between the team and the liaison, usually by e-mail over secure connections. In that view, such questions to the liaison are not illogical. The Commission considers it necessary that when providing personal data to a liaison with the aim of questioning a foreign service about it, it is explicitly stated which data may be provided to the foreign service in question and at what level the decision to do so was taken within the MIVD. This allows the liaison to trace where the boundaries lie in the specific case and limits the risk of unintentional unlawful provision of personal data. The Commission also notes that a record must be kept of the provision of personal data (Article 42 Wiv 2002).

Practice: difference in the provision of personal data by Dutch and non-Dutch citizens The

Commission has found that in practice the MIVD attaches particular value to Dutch citizenship. The offices and teams investigated apply the principle that the service does not provide personal data of Dutch citizens in principle. This method is common in international cooperation between services; it is an attempt to prevent damage to national interests.

The internal policy stipulates that the decision to provide personal data on the basis of Article 36 Wiv 2002 is taken by the director of the MIVD, after consultation with the Legal Affairs department. The Commission has found that in practice this internal policy rule is only followed when providing personal data of Dutch citizens or in exceptional situations. In other cases, decisions to provide personal data are taken at a lower level. The Commission considers it careless that the policy is not complied with in these cases. It notes, however, that the protection of personal privacy does not require that such decisions on the provision of personal data are always made at the level of the director." Such decisions must in any case be at a higher level than usual when providing personal data to services for which it can be doubted whether they meet the cooperation criteria. The Commission considers it important from the perspective of due care that the MIVD updates the policy and ensures compliance with that policy.

²⁸ By way of comparison, with regard to the AIVD, the Commission has ruled that the decision on the provision of personal data to services in respect of which there is no doubt as to whether they meet the cooperation criteria must be made at least at the level of the team leader. Supervisory report no. 22A, on the cooperation of the AIVD with foreign intelligence and/or security services, chapter 7.3, *Parliamentary Papers 112009/10*, 29 924, no. 39 (annex), available at www.ctivd.nl.

Practice: mandate rules not followed As indicated

in paragraph 5.1, the MIVD Sub-Mandate and Authorisation Decree 2009 states that the authority to provide data on the basis of Article 59 is reserved for the director

of the MIVD. The Commission notes that this rule is often not followed in practice when providing personal data. The Commission considers this to be careless. When it comes to providing personal data, there is an infringement of personal privacy. When providing personal data on the basis of Article 59, in the interest of the foreign service, the infringement made by the MIVD is not directly counterbalanced by an intelligence interest. Limiting the mandate when providing personal data in the interest of a foreign service is therefore required from this perspective. The Commission recommends that the MIVD ensure compliance with the policy on this point.

Practice: more restraint required when providing raw research results The investigation has also shown that in some cases raw research results, such as telephone and traffic data, were provided in full to a foreign service. The Commission does not consider this to be unlawful in principle, but is of the opinion that the MIVD should exercise restraint in this regard and should consider to what extent it is necessary and proportionate to provide the data in full. Raw research results have not (yet) been assessed for relevance to the performance of the MIVD's tasks. By providing them in full, the foreign service in question is given the opportunity to assess for itself the relevance of the research results for its own performance of its tasks. When assessing the necessity, the MIVD must consider what purpose is served by providing the raw data. A sound proportionality assessment between the purpose that is being attempted and the infringement of the privacy of the person concerned by providing the data is also necessary.

Practice: unlawful provision to investigative service The Commission has found a situation in its investigation in which, in its opinion, the provision of personal data was unlawful. The personal data were provided to a foreign investigative service. The law does not allow the MIVD to provide data to foreign investigative services. The MIVD was aware of this and for that reason chose to provide the personal data via a foreign intelligence service after a request from the foreign service. The Commission considers this to be unlawful.

5.3 Additional requirements for the provision of (personal) data

Indication of the degree of reliability or of the source The law requires that the data processed in the context of the performance of the MIVD's tasks be provided with an indication of the degree of reliability or with a reference to the document or source from which the data are derived (Article 12 Wiv 2002). This rule is further elaborated in the MIVD's internal policy. The MIVD uses a scale division in which an overall assessment of the degree of reliability of the data is given on the basis of an assessment of the credibility of the intelligence and the reliability of the source.

Practice: lack of indication is unlawful The Commission has found that the MIVD applies this method in practice, mainly when it concerns information that has only one source. In other cases, the reliability of the data is expressed in more general terms or reference is made to the document or source from which the data was taken. However, the Commission has also found data where this is not or hardly indicated. In these cases, the MIVD does not comply with the legal requirement, which the Commission considers unlawful.

Third-party rule Article 37

Wiv 2002 requires that when providing (personal) data, the condition is included that the data may not be provided to others (the third-party rule). This rule is also laid down in the internal policy of the MIVD. It states that the MIVD must adhere to the third-party rule in all cases. Services that do not exercise the utmost discretion in this regard lose their credibility with partner services and are subsequently deprived of information, according to the operating policy.

Practice: third-country rule instead of third-party rule is unlawful In practice, the MIVD explicitly includes the third-party rule in the documents it provides.

In addition, the MIVD places a mark on all outgoing data. In this mark, the service indicates to which foreign service(s) the data may be provided. The Commission notes that in many cases it is not indicated to which foreign service(s), but to which country(ies) the data is made available. The MIVD has indicated that it prefers the third-country rule over the third-party rule. The Commission points out that this method is currently not in accordance with Article 37 and is therefore unlawful.

5.4 Obtaining data from foreign services

The MIVD receives data from foreign services through various channels. This data is collected by a separate office within the MIVD. The task of this office is to manage this data and forward it to the appropriate offices or teams. The office also arranges and stores the data.

The data that the MIVD receives is partly based on requests from the MIVD to foreign services or broader agreements between services to receive such data. This also partly concerns data provided unsolicited. This unsolicited provision of data is becoming increasingly important, certainly in subjects that are being investigated by many foreign services, such as combating terrorism and piracy, and in the context of crisis management operations in coalitions. In some cases, shielded digital networks have been set up for this purpose, which enable data to be shared among a number of services at the same time.

Lack of policy for requesting information

Making a request to a foreign service is covered by the MIVD's internal policy

no further details were given. Such a request is called a *request for information* (RFI).

The Commission considers it important that the MIVD formulates a policy on making requests for information to foreign services, in particular for requests to foreign services in respect of which it is doubtful whether they meet the cooperation criteria. It recommends that the MIVD formulate such a policy and that attention be paid to the guarantees for personal privacy described in paragraphs V.ii and V.iv of the legal framework in the annex.

Practice: no unlawful requests The Commission has found that, in relation to the number of requests received, the MIVD only sends RFIs to foreign services to a limited extent. The requests to foreign services are generally drawn up within the offices or teams without intervention or consultation with the department management. If there is a special reason for this in a specific case, coordination is sought at a higher level. The Commission has not found any irregularities in the RFIs that were sent to foreign services that the Commission investigated.

Practice: attention to the lawfulness of information obtained

The Commission states in paragraph V.iv of the legal framework in the appendix that the MIVD must make certain considerations before it can use data that has been received (unrequested) from a foreign service. The MIVD must take into account the possible purpose and necessity of the provision of data. It is also important that the MIVD provides an interpretation of the data received and evaluates it for relevance to the performance of the task. This has been reflected in the MIVD's internal policy. Guidelines on the use of received data can be found in an internal manual for analysts. The analyst must be critical in the use of such data. It is often unclear on which sources the information is based or what purpose was intended with the provision of the data. More (own) information is always required to be able to assess the value of the data. In this perspective, there are no 'friendly' foreign services from which information can simply be taken over. The internal policy on received data states that, after consideration, it is permitted to process such data in MIVD products. The MIVD then takes over data and provides it, under the responsibility of the service, to MIVD customers, such as the Commander of the Armed Forces or the Prime Minister.

The question of whether the foreign service that provides the data has obtained it lawfully is also important when the MIVD receives data. As the Commission also pointed out in its report 38, the MIVD must be particularly alert to indications that give rise to doubts about the lawfulness of the acquisition of the data by the foreign service. In this context, the Commission once again points out the importance of sufficient information about the legal powers and (technical) capabilities of foreign services (see also Chapter II of the legal framework in the appendix to this supervisory report).

The Commission has not separately investigated how data received from foreign services were weighed in specific cases and how this was reflected in the final products of the MIVD. However, it did include this question in its investigation into operations that the MIVD carried out together with foreign services (see Chapter 8). The Commission notes that in the joint operations investigated, the MIVD dealt critically with data that it received from the foreign services concerned and gave its own interpretation to them each time. The Commission has not found any cases in which the MIVD had indications that the data provided had been obtained unlawfully by the foreign service concerned.

5.5 Cooperation in security investigations

Importance of inquiry with foreign services The

MIVD also works with foreign services in the context of conducting security investigations. A security investigation precedes the issuing or refusal of a declaration of no objection that is necessary to be able to fulfill a position of trust.

If a person concerned or their partner has resided abroad (for a long period) in the period prior to a security investigation, the MIVD is largely dependent on information from foreign services for the investigation into this period. The MIVD has an obligation to make a reasonable effort to obtain the information required for a sound assessment."

If it proves impossible for the MIVD to obtain the necessary information with a reasonable effort, it follows that the security investigation has not been able to yield sufficient data to make a judgment. The person concerned will then be refused the provision of a declaration of no objection. It is therefore also in the interest of a person concerned in a security investigation that the MIVD cooperates properly with foreign services in the context of security investigations. On the basis of article 36 Wiv 2002, the MIVD can provide data about a person concerned or his/her partner to a foreign service that can perform an administrative check on the basis of this data.

In addition, on the basis of Article 59 Wiv 2002, the MIVD can provide information at the request of a foreign service about a person involved in a security investigation by that service.

Practice: inquiries with foreign services via AIVD Only in incidental

cases does the MIVD directly inquire with the military intelligence and/or security service of the country where the person concerned has resided. In most cases, cooperation with foreign services in the context of security investigations takes place via the AIVD.

The MIVD sends the request to perform a check-up to the AIVD, which in turn forwards it to the foreign service in question. The AIVD does not maintain a relationship with all foreign services

on the basis of which it is possible to provide and request data about a data subject. After all, the provision of personal data must be designed with care and sufficient safeguards. Before entering into a cooperation relationship in the field of security investigations, it must therefore be considered whether the foreign service in question is eligible for this. The MIVD relies on the considerations made by the AIVD in this context.

Practice: no explicit mention in the registration form The Commission

notes that in some cases, those involved in a security investigation are not always explicitly informed of the fact that their personal data or that of their partner may be provided to a foreign service. This possibility is not mentioned in the (digital) registration form for personal data that must be completed by the persons involved. However, this possibility is mentioned in the explanation of Articles 5 and 1van of the Defence Security Investigations Policy Rule." In its report on the cooperation between the AIVD and foreign services, the Commission indicated that it considers it appropriate in the interests of the persons involved that they are explicitly informed in all cases. They must know that the AIVD has the possibility to make inquiries with a foreign colleague service if they have stayed abroad. Following a recommendation from the Commission, the AIVD has included a passage on this in the registration form for personal data that the persons involved must complete and sign before a security investigation is started." It is now also directing the same recommendation to the MIVD.

²⁹ CTIVD Supervisory Report No. 11a on the Commission's investigation into the implementation of the Security Investigations Act by the MIVD, Chapter 5.2.4, *Parliamentary Papers* //2006/07, 29 924, No. 15 (appendix). Available at: www.ctivd.nl.

³⁰ Government Gazette, 25 October 2013, no. 29945.

³¹ Supervisory report no. 22A, on the cooperation of the AIVD with foreign intelligence and/or security services, Chapter 10, *Parliamentary Papers* 112009/10, 29 924, no. 39 (appendix), available at www.ctivd.nl.

6 Technical and other forms of

If the MIVD uses its powers exclusively in the interest of the foreign service, then, on the basis of Article 59, it is considered to be *providing* support. It is also possible for the MIVD to receive support from a foreign service. In paragraphs V.vi to V.viii of the legal framework in the appendix to this supervisory report, the Commission describes the guarantees for the protection of personal privacy that apply when providing or receiving technical and other forms of support. This chapter discusses the *policy and practice* of the MIVD when providing or receiving support.

Internal policy: distinction between support and joint operations underexposed The internal policy of the MIVD only addresses to a limited extent the legally permitted authority to provide support to a foreign service. A request for support from the foreign service must be signed by the competent authority. The request must contain a precise description of the requested form of support and a description of the reason why the support is considered desirable. Any political risks that are partly decisive for the support and the conditions for the support must be able to be assessed in advance. The internal policy does not make a clear distinction between situations in which there is support and situations in which there is a joint operation. In its previous report on the cooperation of the AIVD with foreign services, the Commission explained that the distinction between carrying out a joint operation and providing support lies in the question of whether the activities actually contribute to any ongoing investigation.³² If this is the case, then it can be said to be a joint operation. If this is not the case, then the use of the (special) powers must be regarded as support. The Commission recommends that the MIVD include the distinction between providing support and carrying out a joint operation in internal policy.

Internal policy: submitting a request for support wrongly not regulated Submitting a request for support to a foreign service is not regulated in internal policy. In paragraph V.vii of the legal framework in the appendix to this supervisory report, the Commission recommends that the legislator consider laying down in law a consent scheme for requests for support to foreign services and an associated written motivation obligation. It recommends that the MIVD formulate a policy in line with this for submitting requests for support to foreign services and that attention be paid to the safeguards for personal privacy described in paragraph V.vii of the legal framework in the appendix.

Practice: limited scope of support received The Commission has investigated the receipt and provision of technical and other forms of support in practice. With the exception of one case, it has not been found that the departments investigated received operational support in the context of ongoing investigations. However, there has been repeated receipt of support that indirectly contributes to this and where no (special) powers, such as training and technical knowledge, are used. The foreign services from which the MIVD received support concern services for which there is no doubt as to whether they meet the cooperation criteria.

³² Supervisory report no. 22A, on the cooperation of the AIVD with foreign intelligence and/or security services, chapter 8, *Parliamentary Papers* 2009/10, 29 924, no. 39 (appendix), available at www.ctivd.nl.

One case of *receiving* operational support involves a request to a foreign service asking what the service's capabilities are for monitoring someone's communications. The request includes the phone number and email address of the service.

person concerned. The Commission is of the opinion that, although this is not explicitly requested, such a request should be seen as a request to use a tap or sigint resources. For this, according to the own legal arrangement, motivated permission must first be requested from the Minister. No permission was obtained from the Minister of Defence for the request to the foreign service to use the relevant powers. The Commission considers this unlawful.

Practice: support sometimes wrongly considered a joint operation The Commission notes that the MIVD regularly provides support. Here too, it concerns foreign services for which there is no doubt as to whether they meet the cooperation criteria. In a number of cases, the MIVD did not consider the support as such, but wrongly considered it a joint operation. The result of this is that in these cases, permission for the support was wrongly not requested from the Minister of Defence, which is required by Article 59 Wiv 2002. The Commission considers this unlawful.

Practice: permission requested from the minister more often for operational cooperation During the investigation by the Commission, the MIVD started working more with so-called Article 59 charges: requests for permission to perform activities based on Article 59. Since mid- 2011, the Secret Operations Department has submitted all cases of operational cooperation or support to the Minister of Defence. The minister is asked for permission. With this method, the Secret Operations Department goes further than what is legally required. The Commission is positive about this. However, it notes that in some cases the requests to the minister do not explicitly state whether it concerns support or a joint operation. In view of the considerations that the minister must make before granting permission, the Commission does consider this qualification to be important.

Practice: lack of ministerial consent in one case unlawful The Commission has found that in one case of support, permission for the execution of the activities was not requested from the minister but from the director of the MIVD. The support did not involve the use of special powers. In this case, the relevant department of the MIVD referred to the Commission's previous supervisory report on the cooperation of the AIVD with foreign services, in which the Commission made qualifications to the ministerial consent that applies in all cases of support.³³ Although the Commission welcomes the fact that its findings are included in the specific operational process, it notes that the same passage in the aforementioned report states that, despite the qualifications, the statutory regulation must simply be followed. Furthermore, in this case there were politically sensitive aspects that in themselves justified a request for permission from the minister. The Commission therefore considers it unlawful that the support was carried out without the minister's consent. This is required by Article 59 Wiv 2002.

³³ Supervisory Report No. 22A, on the cooperation of the AIVD with foreign intelligence and/or security services, Chapter 8, *Parliamentary Papers 112009/10*, 29 924, No. 39 (appendix), available at www.ctivd.nl.

Practice: AIVD coordination lacking in providing support The Commission has further noted that the MIVD has supported foreign services in activities that were carried out on Dutch territory. The Commission notes that according to the Wiv 2002, permission from the Minister of the Interior and Kingdom Relations is required if activities of foreign services take place in places that are not used by the Ministry of Defence. Coordination with the AIVD is also necessary with a view to deconfliction. This has not always been the case. Since there is no question of acting in violation of a statutory provision, the Commission considers this to be careless.

Practice: insufficient motivation for providing support in one case The Commission has found one case of support in which support was provided to a foreign service with which there was no cooperation relationship at the time. No cooperation agreement had been concluded with this service in which such a far-reaching form of cooperation was provided for. The Commission has not found that the MIVD explicitly took this into account when considering whether or not to comply with the request for support. Nor was this mentioned in the request for permission for the support to the minister. The Commission considers it important that this does happen, certainly in the case of a joint operation with a service with respect to which it can be doubted whether it meets the cooperation criteria.

Practice: various forms of support The Commission has found that support has also been provided to foreign services, independently of operational activities. This includes, for example, providing courses and training or sharing technical knowledge. These forms of support must also be regarded as such and may only take place after permission has been granted by the Minister.

The secret appendix to this supervisory report provides examples of concrete forms of support provided by the MIVD to foreign services.

7 Joint Operations

If the MIVD (partly) carries out operations in cooperation with foreign services for its own ongoing investigation, this is done in the context of its own task execution. These operations are also called joint operations. This form of cooperation must be distinguished from the provision of support as discussed in Chapter 6, which does not take place in the context of its own task execution but only for the benefit of the foreign service. In this chapter you can read more about the policy on and the practice of joint operations.

Internal policy: specific policy for joint operations is lacking The MIVD has not formulated a specific policy for conducting joint operations. In essence, all the rules that also apply when conducting an own operation apply. However, cooperation with foreign services also adds an extra dimension to the execution of an operation, for example because of the possible interests that a foreign service may have in the execution of an operation. The MIVD must be aware of this and exercise a certain degree of control over the operation so that it can be monitored whether the operation is conducted within the applicable legal frameworks. This is all the more important when it concerns the execution of an operation with a foreign service in respect of which it can be doubted whether it meets the cooperation criteria. A different proportionality assessment also applies to the use of special powers in the context of a joint operation (see paragraph Vv of the legal framework in the appendix). The Commission considers it important that the MIVD formulates a specific policy on this matter.

Internal policy: policy on ministerial consent not yet established Chapter 6 states that since mid-2011 the Secret Operations department has submitted all cases of operational cooperation or support to the Minister of Defence. The minister is asked for consent. With this procedure, this department goes further than what is legally required. The Commission is positive about this. It notes that this procedure for joint operations has not (yet) been established in the internal policy of the MIVD and recommends that this be done.

Practice: general picture of joint operations positive The Commission has investigated joint operations of the MIVD in the Netherlands as well as abroad. The operations investigated show that the MIVD, apart from the cases described here, has complied with the conditions set in the law and legislative history when carrying out joint operations with foreign services, and has therefore proceeded cautiously.

In the joint operations that were investigated, the consent requirement was always met and, where necessary, for example in the case of politically highly sensitive operations, consultation was held with the Minister of Defence. Insofar as special powers were used, the requests for consent always focused on the joint nature of the operation. However, the Commission notes in general that the request for consent should address more explicitly the additional infringement of personal privacy that occurs as a result of the cooperation with the foreign service (see paragraph V.vi of the legal framework in the appendix).

The Commission has no indications that the MIVD does not sufficiently take charge of or provide sufficient guidance for joint operations with foreign services. The MIVD is generally aware of the possible divergent interests of foreign services in a specific operation and keeps a close eye on its own interests. The MIVD always tries to play an independent role, also in cooperation with foreign services that are considerably larger than the MIVD in terms of size, capacity and possibilities. The Commission also notes that the MIVD management is generally aware of the concrete implementation of joint operations and provides guidance where necessary.

To the extent that the Commission has identified irregularities or negligence in specific joint operations with foreign services, these are described below and, where necessary, further explained in the secret annex to this report.

Practice: joint operations mainly in the case of long-term cooperation relationships The MIVD mainly carries out joint operations with partner services with which a long-term cooperation relationship exists. For the MIVD, important distinguishing criteria for operational cooperation are the reliability, professionalism and working methods of the foreign service in question. Before the service enters into cooperation in a specific operation, it considers whether the joint operation fulfils a national need or whether the cooperation has a clear added value. Both questions must be answered in the affirmative before a joint operation is started. During the research period, an agreement was reached several times at the director level with a partner service to carry out a joint operation. In those cases, the MIVD department in question was given the task of a joint operation.

to come.

Practice: joint operations in new cooperation relationships require explicit consideration The Commission has found that joint operations have also been entered into with foreign services with which there was little or no cooperation at that time. No cooperation agreements had been concluded with these services that provided for such a form of cooperation. Although the Commission does not rule out the possibility that a joint operation will be started with such services, it does consider it important that an explicit consideration is made as to whether the foreign service in question is eligible for such a very far-reaching form of cooperation. The Commission has not found that such a consideration has taken place in those cases. The Commission considers it important that this does take place, certainly in the case of a joint operation with a service for which there are doubts as to whether it meets the cooperation criteria.

Practice: inadequate file management

The Commission notes that the file management in the context of joint operations often leaves much to be desired. It has cost the Commission a great deal of time and effort to obtain a complete picture of certain operations. In many cases, the Commission has not been able to find important matters, such as specific decision-making and the considerations made in that context, in the files but has had to establish them by conducting interviews. The Commission considers it undesirable that the ability to trace specific matters in these cases depends on the collective or individual memory of employees of the service. This not only hampers subsequent supervision but also complicates internal accountability and control, certainly in the case of operations that were carried out some time ago. The Commission considers this to be careless. The Commission has noted improvements in this area during the investigation. The Commission also notes that in many cases, it is not recorded that the operation has ended and what the reasons are for this. Nor are operations evaluated in writing. With a view to the required care, the Commission sees added value in reporting in this context. The Commission recommends that the MIVD continue to pay attention to the need for careful and thorough file formation and to record the termination of joint operations in writing.

Practice: unlawful use of a source The Commission has found several joint operations in which the MIVD, in collaboration with foreign services, used a specific source. This source was not designated as an agent within the meaning of Article 21 Wiv 2002 for more than three years. Permission for the use of this agent was only obtained on 15 March 2011. The Commission is of the opinion that the use of the source before 15 March 2011 was unlawful insofar as there were secret or unusual activities of the source under the direction of the MIVD.

In addition to the unlawful use of this source, the Commission notes that, even after it was designated as an agent, there was no careful file-keeping and reporting as required in the context of an agent operation.³⁴ The reporting was so limited that it did not follow from it which instruction was given to the agent. This is required by law.³⁵ The Commission also considers this unlawful. The Commission has found that the MIVD did this during

the Commission's investigation has been restored.

Practice: carelessness in the performance of operational activities by the analysis team
One joint

operation was found that was started under the leadership and control of an intelligence team that is normally not responsible for the performance of operational activities but is involved in the analysis of intelligence. Some of the operational activities were performed by an analyst. The operation involved the performance of operational activities abroad. The team estimated that there were limited risks associated with the operation. The department that is normally responsible for the performance of such operations was initially not involved in the performance. The Commission considers this course of events to be irresponsible. Performing covert operational activities abroad, assessing and limiting the associated risks and coordinating various operations requires special knowledge and experience. The Commission is of the opinion that such activities should always take place under the leadership and control of persons who are qualified to do so within the MIVD. With regard to the parts of the operation in which this involvement was lacking, the Commission considers this to be careless.

The Commission further notes that at some point the operation was transferred to the department that is normally responsible for such operational activities. From that moment on, this department was responsible for the operation. However, the Commission has not been able to establish the moment of transfer with certainty. The file of the operation does not provide any clarity on this point. Nor has the Commission been able to establish this on the basis of the discussions it has held. This has resulted in both departments indicating that they do not bear responsibility for the operational activities that were carried out with regard to a certain part of the operation. The Commission also considers this to be careless.

Practice: sharing sensitive operational information in two cases in breach of law The Commission questions the decision to share sensitive operational information with a foreign service in two cases, in one case during a joint operation and in one case outside of it. In these cases, the MIVD was unable to clarify the reason for this.

The Commission considers this unlawful in view of the obligation to protect sources (Article 15 Wiv 2002). The Commission discusses this in more detail in the secret annex to this report.

³⁴ For the legal framework for the instruction and management of agents, see also supervisory report no. 37 on the deployment of several long-term agent operations by the AIVD, chapter 4.1, *Parliamentary Papers 11*, 2013/14, 29 924, no. 108 (appendix), also available at www.ctivd.nl.

³⁵ Article 21 paragraph 6 Wiv 2002 stipulates that the instruction to the agent must be recorded in writing.

8 Multilateral cooperation with foreign services

The MIVD also works in multilateral partnerships with intelligence and security services of other countries. These partnerships can be formalised and take place within the framework of international or supranational organisations, such as the North Atlantic Treaty Organisation (NATO) or the European Union (EU). There are also non-formalised partnerships and forms of multilateral cooperation that are entered into on an ad hoc basis. The MIVD has mainly worked multilaterally with Anglo-Saxon and/or European countries. Particularly when crisis management operations are carried out in coalition, multilateral cooperation between (military) intelligence and security services is a necessary

datum.

The exchange of data within multilateral cooperation has its own dynamics. On the one hand, it serves a multilateral purpose if data that may be of interest to the cooperation partners is shared within the entire cooperation. This certainly applies to the support of joint crisis management operations. This is also expected of intelligence and security services in areas such as combating terrorism and piracy, and there are internationally shared interests in sharing data broadly. On the other hand, it is true that sharing data more selectively, to just one or a few foreign services, yields more for the MIVD from a *quid-pro-quo* perspective. After all, data that is only available to a limited extent is more valuable than data that is widely available. Furthermore, the protection of personal privacy requires the MIVD to be cautious and well-considered when sharing personal data. After all, the provision of personal data in itself constitutes an infringement of personal privacy. This tension between broad and selective data provision largely characterises the multilateral cooperation between the MIVD and other intelligence and security services.

This chapter discusses the multilateral cooperation of the MIVD in more detail. In paragraph 8.1, multilateral cooperation within NATO is discussed. Paragraph 8.2 discusses multilateral cooperation within the EU. Finally, in paragraph 8.3, you can read more about ad hoc forms of multilateral cooperation.

8.1 Multilateral cooperation within NATO

NATO itself has no intelligence capacity and is dependent on the intelligence and security services of the member states. Within the Netherlands, both the MIVD and the AIVD contribute to NATO's intelligence position. Although NATO is originally a military organisation, the increasing focus on terrorism, among other things, also requires cooperation with the AIVD. The MIVD and the AIVD work together with regard to representation at NATO and try to convey a coordinated Dutch position in various NATO forums.

Military Intelligence Committee The MIVD is naturally involved in the military branch of NATO. The director of the MIVD takes part in the *Military Intelligence Committee*, NATO's main intelligence body. The intelligence needs of this body are generally or specifically posed to the (military) intelligence and security services of the member states. In any case, the MIVD attempts to provide targeted answers to the questions specifically posed to the service. In addition, the MIVD shares many products within NATO, such as intelligence reports and threat analyses, which have been produced for the Dutch armed forces or other customers. In this way, the MIVD meets NATO's more general intelligence needs.

Intelligence Fusion Cells and Centers An

Intelligence Fusion Cell (IFC) also operates on behalf of NATO . The *NATO Intelligence Fusion Center*, located in the United Kingdom, plays an important role in the intelligence support of international missions and operations. Here, intelligence from various services is combined into new intelligence products that can be used in a strategic, tactical and operational context within NATO. The *NATO Intelligence Fusion Center* does not have access to its own intelligence or raw data, but is dependent on the analyses and reports of the services of the member states.

Meetings Multilateral

conferences and consultations are organised very regularly within NATO.

These meetings are often focused on strategic and policy-related subjects and are primarily intended for the exchange of views. The MIVD generally experiences the concrete intelligence value of this as limited. However, the service does value the exchange of views and ideas and the coordination of policy choices. Such meetings can also serve as a gateway to further bilateral consultation.

Battlefield Information Collection and Exploitation Systems The *Battlefield*

Information Collection and Exploitation Systems (BICES) network is used by the intelligence and security services of NATO member states and some other countries. The network enables the secure exchange of classified information between NATO bodies and the relevant intelligence and security services. The network is also intended as a meeting place where analysts or other employees can come into direct contact with each other.

BICES has a generally accessible section. Data placed here are made available to all participating intelligence and security services. In addition, BICES has protected sections to which only certain services or persons have access. The protected sections are often linked to a specific subject or theme.

The MIVD's operational policy discusses the sharing of data via BICES in more detail. In general, MIVD products, such as intelligence reports and threat analyses, are placed on the protected parts of BICES shortly after they have been determined or are shared bilaterally with foreign services. The MIVD is more cautious about placing data on the general parts of BICES. The Commission notes that this also depends on the subject. In the context of a crisis management operation in a coalition, the MIVD shares certain data more easily than in the case of subjects in which there is less common interest.

Role of third-party rule The

MIVD indicates that, in addition to its own internal policy, the third-party rule is also a reason why data exchange in a multilateral context has a more limited depth or speed than bilateral data exchange. According to the third-party rule, data originating from an intelligence or security service may not be passed on without explicit permission to do so. The information processed in MIVD products often also originates from other intelligence or security services. The MIVD cannot simply pass on this data, but must obtain permission to do so from the relevant foreign service from which the data originate.

Practice: no irregularities in multilateral cooperation within NATO In practice, the MIVD shares and receives a multitude of data within NATO. The MIVD makes frequent use of BICES for this purpose. This often concerns the exchange of evaluated intelligence in the form of elaborated, all-source products. The exchange of raw data or specific *single-source products*, such as *sigint* or *humint*, rather takes place in a limited multilateral or bilateral context. The Commission has not found any irregularities in the sharing and receiving of data by the MIVD within NATO.

8.2 Multilateral cooperation within the EU

EU Intelligence Agencies Like NATO, the EU

does not have its own intelligence capacity, but is dependent on the EU member states for this. Based on the Common Foreign and Security Policy, the EU focuses on external civil and military threats. The EU therefore benefits from both civil and military intelligence. Various intelligence agencies have been established within the EU. The most important are *the Joint Situation Centre (SitCen)* and the *Intelligence Division of the EU Military Staff (EUMS)*. The SitCen functions as an alert cell for international crisis situations and provides (information) support in the context of international operations. In addition, the SitCen produces intelligence and threat analyses for the benefit of EU policy. The SitCen, similar to an IFC, has the ability to bring together information, to compare different perspectives and to utilise the specialisms of the various intelligence and security services.

From the Netherlands, the SitCen is fed with (civilian) intelligence by the AIVD and to a lesser extent by the MIVD.

In addition to the SitCen, there is the military-oriented intelligence body EUMS. Here too, intelligence from the member states is brought together and processed into EU intelligence products, which are then exploited to the member states. The MIVD provides this intelligence body with MIVD products. The civil and military intelligence are brought together within the *Single Intelligence Analysis Capacity (SIAC)*, a partnership between the SitCen and the intelligence division of the EUMS.

Internal policy

In its policy, the MIVD also pays attention to providing data to the EU. The promotion of international security and stability in the EU context is increasing. In that context, it is important to provide intelligence support where possible.

At the same time, it is noted that exploiting MIVD products to the EU generally yields a lower return than exploiting them to individual international partners. The MIVD strives to make a decision per product as to whether and in what capacity provision to the EU is possible or desirable.

Practice: no irregularities in multilateral cooperation within the EU The Commission notes that in practice data is regularly received from the EU intelligence agencies. For certain teams within the MIVD, this data is valuable. The MIVD regularly provides evaluated intelligence in the form of detailed air source products, to the extent that this data corresponds to the EU's areas of interest. In this way, the MIVD attempts to respond to the many RFIs that are issued to the MIVD by the EU intelligence agencies. The Commission has not found any irregularities in the data exchange between the MIVD and the EU.

8.3 Ad hoc multilateral cooperation

Practice: increasing ad hoc operational multilateral cooperation Multilateral cooperation generally lends itself mainly to the exchange of views on more strategic subjects and the coordination of policy choices in the field of national and international security in the broad sense. More in-depth forms of cooperation, including at the operational level, and concrete exchange of data are usually more bilateral matters. The Commission notes that the MIVD also cooperates extensively in (small) multilateral contexts. Such cooperation occurs in areas where concrete interests are shared between multiple intelligence and security services or where there is a common enemy, for example in the field of counter-espionage. The Commission sees that this development is not only occurring in the exchange of data or operational cooperation, but also in other, more supportive areas. For example, the MIVD increasingly thinks in terms of the division of efforts *and* examines whether certain needs can be met jointly.

Practice: no irregularities in joint operations in a multilateral context The Commission has further investigated a number of joint operations that were carried out in a multilateral context. In Chapter 7, certain aspects of the legality of some of these operations were already discussed in more detail. No irregularities were found in these. The Commission notes here that the strength of this form of cooperation lies not only in using each other's capacities and dividing the deployment of resources, but also in the coordinated action and coordination of operational activities. At the same time, it is noticeable that this cooperation is often more difficult to get off the ground, because there are more divergent interests. It is also more difficult to reach operational decisions that all services can agree with. Furthermore, the exchange of data is more difficult, because it must be constantly considered whether data can be provided to only one or to all foreign services involved. Such a form of cooperation requires a leading party, clear objectives and clear agreements between

the participating services.

9 Cooperation in the context of the mission in Afghanistan

The Commission has investigated the cooperation with foreign services that took place in the wake of the intelligence support provided to the armed forces during their deployment in Uruzgan in the period 2006 to 2010 and Kunduz in the period 2011 to 2013. Afghanistan was the primary focus of the MIVD during this period.

Focus of the Commission's investigation

In its investigation into the missions in Afghanistan, the Commission looked in particular at the provision of support to foreign services and the execution of joint operations (see paragraph 9.1), at the exchange of information with foreign services (see paragraph 9.2) and at the development of cooperative relations (see paragraph 9.3). In doing so, the Commission took into account the special nature of international cooperation in mission areas. In this context, there are constant direct and concrete threats to the armed forces. The cooperation between

the MIVD and the foreign services of other countries participating in the mission are very close and rapid action is required at a great distance from The Hague. The Commission has predominantly positive findings on the cooperation of the MIVD with foreign services during the mission in Afghanistan. This explains the brief description of the cooperation in this chapter.

Topics not investigated by the Commission The MIVD provided extensive intelligence support in the context of these missions in Afghanistan. The Commission did not investigate this intelligence support itself, apart from the cooperation with foreign services.

Furthermore, the investigation did not focus on cooperation with foreign services in the field of *Sigint*.³⁶ In connection with the mission in Afghanistan, cooperation in this field was included to the extent that it had an effect on the overall development of the cooperative relations and is discussed in paragraph 9.4. Cooperation with foreign services in the field of *Sigint* and other large-scale data processing was discussed in the report on the use of *Sigint* by the MIVD (no. 28)³⁷ and the report on data processing by the AIVD and the MIVD in the field of telecommunications (no. 38)³⁸.

In this supervisory report, the Commission also does not address the possible contribution that the MIVD made to the elimination of targets in Afghanistan (*targeting*). The Commission has chosen not to include this specific subject in this more general investigation into cooperation with foreign services. This subject is addressed in the investigation that the Commission recently initiated into the contribution of the MIVD to targeting, announced on 22 May 2015.

³⁶ The Commission has indeed conducted an investigation into cooperation with foreign services of the Intelligence, Counter-Intelligence and Security and Secret Operations departments.

³⁷ Supervisory report no. 28, on the use of *Sigint* by the MIVD, chapter 9.3, *Parliamentary Papers 11 2011/12*, 29 924, No. 74 (appendix), available at www.ctivd.nl.

³⁸ Supervisory report no. 38, on data processing in the field of telecommunications by the AIVD and the MIVD, Chapter 5, *Parliamentary Papers 112013/14*, 29 924, no. 105 (appendix), available at www.ctivd.nl.

9.1 Providing support and conducting joint operations

The Commission found no irregularities in the mutual provision of support to and the conduct of joint operations with foreign services.

9.2 Data exchange in and outside the mission area

Collaborative arrangements for data exchange The data exchange between the MIVD and foreign services in the mission area usually takes place via various channels. On the one hand, there are shared communication systems, such as the aforementioned NATO system BICES, where data is placed that can be made available to one or more foreign services at the same time. On the other hand, information is shared via deployed units on site: the *National Intelligence Cell (NIC)* or the *National Intelligence Support Team (NIST)*. A difference between a NIC and a NIST is that a NIST includes analysis capacity. This ensures that analytical collaboration with foreign services can also take place in the mission area.

Intelligence sharing in practice

Several NICs and NISTs were deployed in Afghanistan during the Uruzgan mission and during of the Kunduz mission. These deployment units each had a role to play in maintaining contacts with foreign services on the spot. The Commission's investigation has shown that a NIC or NIST mainly functions as a distribution point when cooperating with foreign services.

Relevant intelligence is shared from the Afghanistan intelligence team in The Hague via the NIC or NIST with foreign services and vice versa. Much of the data that is shared in this way is also shared via other channels. Usually, multiple intelligence streams are used simultaneously. The advantage of exchanging data via a NIC or a NIST is that the information quickly ends up in the right place and specific attention can be drawn to the information in question.

In addition to passing on intelligence (products), a NIC or NIST is responsible for distributing oral and written *requests for information* (RFIs). NICs and NISTs also participate in bilateral and multilateral discussions with NICs and NISTs of foreign services in the mission area, during which intelligence sharing also takes place. Reports are drawn up of these discussions.

The NIC or NIST does not have a steering role in the information sharing with foreign services, but rather an executive role. The contact of the NIC or NIST with foreign services is mainly determined by the current concrete information need and is focused on short-term results. The NIC or NIST does not actively participate in building, intensifying or dismantling relations with foreign services and has limited influence on the extent and quality of information sharing.

This is mainly the responsibility of the Afghanistan intelligence team in The Hague, which is also responsible for the substantive management of the deployed units.

Outside the mission area, as in cooperation in other areas, contacts are maintained between the headquarters of foreign services. To this end, bilateral discussions are held periodically with foreign services. In between these discussions, information is exchanged between headquarters by submitting and responding to RFIs.

Practice: no irregularities in data exchange The Commission notes that, in support of the missions in Afghanistan, there has been frequent exchange of both requested and unsolicited data. The starting point for the MIVD was to share intelligence as widely as possible with foreign services, for the benefit of the mission as a whole. This applied in particular to all-source intelligence products. Single-source intelligence was often shared bilaterally or in small multilateral contexts. The Commission has not found any irregularities in the data exchange of the MIVD with foreign services in this context. This also applies to the exchange of personal data.

9.3 Development of cooperation relationships

Practice: no irregularities in the development of collaborative relationships

In its cooperation with foreign services in the context of supporting the missions in Afghanistan, the MIVD has focused primarily on a select group of foreign services from NATO member states and a few other countries where the Dutch

armed forces had direct involvement with. The joint military action was largely decisive for the investment of the MIVD in these cooperative relationships.

The Commission has found that cooperation with services 'unknown' to the MIVD or services with respect to which it can be doubted that they meet the cooperation criteria has hardly taken place in support of the missions in Afghanistan. The Commission has therefore not found any irregularities in this context.

Practice: examples of developing cooperation relationships The Commission notes that the far-reaching cooperation between the MIVD and several foreign services was not self-evident. The MIVD has actively worked to intensify the most important cooperation relationships and has attempted to increase its own contribution, among other things by responding to niches in intelligence work. The MIVD has been able to demonstrate added value in cooperation with foreign services in specific components of the processing of *sigint* and in certain forms of intelligence analysis. This has significantly improved the cooperation relationships and thus the information position of the MIVD with regard to Afghanistan.

The MIVD also participated in an *Intelligence Fusion Cell* (IFC) set up on site. Within an IFC, intelligence from various intelligence and security services is combined. In the context of this participation, the MIVD gained access to some of the communication systems used in this context for intelligence sharing.

The MIVD has collaborated with a larger number of foreign services at a strategic level. This involved almost exclusively services from NATO member states. The collaboration was mainly bilateral. It also regularly participated in multilateral meetings and consultation forums where strategic and policy issues were the subject of discussion.

10 Conclusions and recommendations

This report provides insight into how the MIVD implemented various forms of cooperation with foreign services during the research period from 2007 to the end of 2013. The legal appendix to this report contains the recommendations that the Commission makes to the legislator in the context of the impending amendment of the Wiv 2002. Our conclusions can be read below.

General picture The

Commission's investigation paints a positive picture of the legitimacy of the MIVD's cooperation with foreign services. The number of irregularities found can be described as limited. In addition, the exchange of personal data, the provision of support and the execution of joint operations mainly takes place with services for which there is no doubt as to whether they meet the cooperation criteria. The report provides an overview of how the MIVD shapes these various forms of cooperation. The Commission's most important recommendations focus on adjustments to internal policy.

Establishing and maintaining bilateral cooperation relations When establishing, intensifying or limiting cooperation relations with foreign services, the management of each individual foreign service must fundamentally assess the extent to which the set cooperation criteria are met. The Commission notes that this does not always happen and recommends that the policy in this area be effectively applied in future.

The External Relations Office is responsible for managing, coordinating and facilitating the (inter)national contacts of the MIVD. The office also initiates and coordinates the policy aimed at maintaining favourable (inter)national relations and securing the information position, so that the MIVD can perform its tasks properly. The Commission notes that the operational departments do not always involve and inform the External Relations Office sufficiently. The advisory role of the External Relations Office to the service is also not sufficiently shaped. The Commission recommends that the External Relations Office be better positioned in practice.

Exchange of data The Commission

has a positive view of the provision of personal data to foreign services. As yet, there has been hardly any provision of personal data to questionable foreign services. The MIVD frequently provides data to services for which there is no doubt as to whether they meet the cooperation criteria and with which there is intensive cooperation in certain areas. The Commission has only found an irregularity in one case. This involved the provision of personal data to a foreign investigative service.

The Commission recommends formulating a policy for the provision of personal data to foreign services for which it is doubtful whether they meet the cooperation criteria. To date, this policy does not exist. In this respect, the MIVD must pay explicit attention to the guarantees laid down in the law.

There is also a lack of policy on requests for information from foreign services. The Commission recommends formulating this policy. In practice, the Commission has not found any unlawful requests. With regard to data received by the MIVD, the Commission has not found any cases in which the MIVD had indications that the foreign service concerned had obtained the data provided unlawfully.

Support and joint operations In the MIVD's internal policy, too little attention is paid to the distinction between providing support and conducting joint operations. There is no specific policy for joint operations. In a few cases, the Commission has found that in practice the MIVD wrongly regards providing support as a joint operation. As a result, permission from the Minister of Defence was not requested, which is unlawful. The Commission recommends adjusting the policy on these points and bringing the practice into line with this.

When carrying out joint operations, the MIVD acts lawfully in most cases.

The joint operations are mainly carried out in the context of long-term cooperation relationships. In one case, the Commission found that a source had been used unlawfully, because it had not been identified as an agent and the documentation was inadequate.

In two cases, the MIVD shared sensitive operational information with a third party in violation of the law. foreign service.

Multilateral cooperation The

Commission has not found any irregularities in the various forms of multilateral cooperation.

Afghanistan

The Commission has investigated the cooperation of the MIVD with foreign services that took place in the extension of the intelligence support to the armed forces during the deployment in Uruzgan in the period 2006 to 2010 and Kunduz in the period 2011 to 2013. In the cooperation with foreign services in the context of the support of the missions in Afghanistan, the MIVD has mainly focused on a select group of foreign services of NATO member states and a few other countries with which the Dutch armed forces had direct dealings. The joint military action was largely decisive for the investment of the MIVD in these cooperative relationships.

The Commission has predominantly positive findings on the cooperation of the MIVD with foreign services during the mission in Afghanistan. It has not found any irregularities in the exchange of data.

The Commission has found that the MIVD has hardly cooperated with 'unknown' services or services in support of the missions in Afghanistan, or services with respect to which it can be doubted whether they meet the cooperation criteria. The Commission has therefore not found any irregularities in this regard.

Thus established at the meeting of the Commission on 10 June 2015.