

REVIEW COMMITTEE  
FOR THE INTELLIGENCE AND SECURITY SERVICES

CTIVD no. 22A

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## REVIEW REPORT

On the cooperation of GISS with foreign  
intelligence and/or security services

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## SUMMARY

### Of the review report on the cooperation of GISS with foreign intelligence and/or security services

Good cooperative relations with foreign services are essential for the adequate performance of its statutory tasks by the Dutch General Intelligence and Security Service, further referred to as GISS. They are essential because the information obtained by such cooperation considerably extends the existing information position<sup>1</sup> of GISS and thus increases its capability to assess national security risks and give the responsible authorities timely warning. Especially after the attacks of 11 September 2001, the need for international cooperation of intelligence and security services has emerged more clearly and the willingness to cooperate increased accordingly.

Cooperation of GISS with foreign services on Dutch territory must take place under the direction and control of GISS. GISS frequently investigates indications of possible interference. After identifying unwanted secret activities by intelligence services of other countries, GISS will usually take timely action and appropriate measures depending on the situation.

Before starting to cooperate with a foreign intelligence and/or security service GISS must first assess carefully whether the service qualifies for cooperation. Criteria to be considered are respect for human rights, democratic anchorage, the tasks, professionalism and reliability of the service, the advisability of cooperation in the context of international obligations, enhancement of the performance of statutory tasks and the degree of reciprocity (*quid pro quo*).

It is the opinion of the Committee that GISS should exercise utmost restraint in cooperating with services of countries that have no or hardly any tradition of democracy and where human rights are violated (on a structural basis). In actual practice, however, precluding all and any cooperation with such services in advance could lead to undesirable and even disastrous situations. At the same time GISS should not lose sight of the fact that it is bound by the parameters and restraints imposed by law.

The Committee has established that in concrete operational cases GISS will assess whether a specific way of cooperating with a specific service in a particular situation is permissible. The Committee draws attention to the fact that the process of exclusively making such an *ad hoc* assessment is too limited and may have undesirable consequences. It is the opinion of the

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<sup>1</sup> In this report 'information position' means the information in the possession of and potentially available to GISS and its negotiating position in exchanging information with foreign counterparts.

Committee that for each foreign service with which GISS cooperates it should assess to what extent the service meets the criteria for cooperation. GISS should also state for each individual foreign service, supported by reasons, what forms of cooperation are in principle permissible.

The Foreign Relations department of GISS has an important task in helping to develop, maintain and safeguard the quality of cooperative relations. The Committee has found that in actual practice the steering role of the Foreign Relations department has not taken shape sufficiently.

GISS exchanges information with a large number of services on all kinds of matters. The information exchanged may vary from general information on certain themes and in-depth analyses of phenomena to highly concrete information on particular matters or persons. For each of these forms of information exchange GISS must always ask itself whether it is permissible to provide this specific information to this/these specific service(s) in this specific case. The opposite may apply as well. In some cases GISS must ask itself whether the service can afford not to provide certain information.

The provision of information must be effected in accordance with the so-called 'third party rule', which says that information thus obtained may only be passed on to third parties if the service from which the information was obtained has given permission to do so. The Committee has established that GISS adequately implements the third-party rule with respect to information received from counterpart foreign services, both in policy and in actual practice.

GISS increasingly exchanges personal data and information with foreign intelligence and security services of which it is doubtful whether they satisfy the criteria for cooperation. This can be explained by the growing international threat of terrorism, causing GISS to consider it increasingly advisable to exchange information with foreign counterpart services, in certain situations even with services of which it is doubtful whether they satisfy the criteria for cooperation. The Committee points out that in practice GISS is allowing itself widening scope in its assessments in a certain area.

The Committee has established that in some cases GISS acted unlawfully when it provided personal data to foreign services. The Committee recommends GISS to be more careful about providing personal data to foreign services.

GISS cooperates with foreign services by the reciprocal provision of technical and other forms of assistance. It is the opinion of the Committee that GISS interprets the term assistance too narrowly. The Committee has established that a number of requests for assistance in the form of the exercise of special powers made by GISS to foreign services of which it is doubtful whether they satisfy the criteria for cooperation did not meet the statutory requirements of necessity, proportionality and/or subsidiarity.

GISS conducts joint operations with counterpart services with which it has a long-term cooperative relation. The Committee has not found any indication that GISS, when carrying out joint operations with counterpart services, failed to satisfy the conditions imposed by law and legislative history on such operations.

GISS also cooperates with foreign intelligence and security services in the context of security screenings. GISS is required to make reasonable efforts to try and obtain the information

necessary to make a proper assessment. When carrying out a security screening, however, GISS may be dependent on information from a foreign service. In that case it is in the interest of the person concerned that GISS can cooperate with a foreign service for the purposes of the security screening.

Prior to cooperating for security screening purposes GISS must first assess and decide whether the foreign service satisfies certain criteria for cooperation. The Committee has established that GISS sometimes cooperates for security screening purposes with services of which it is doubtful whether they satisfy the criteria for cooperation, without first having gone through the required assessment and decision processes.

See page 43 of the review report for a detailed overview of the conclusions and recommendations of the Committee.

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## **REVIEW REPORT**

**On the cooperation of GISS with foreign  
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### **1. Introduction**

Pursuant to its review task under article 64 of the Intelligence and Security Services Act 2002 (further referred to as: ISS Act 2002), the Review Committee for the Intelligence and Security Services (further referred to as: the Committee) investigated the cooperation of the Dutch General Intelligence and Security Service (further referred to as: GISS) with foreign intelligence and/or security services. A similar investigation is being conducted into the cooperation of the Dutch Defence Intelligence and Security Service (further referred to as DISS) with foreign intelligence and/or security services. A separate review report on the latter investigation will be published in due time. Pursuant to article 78(3), ISS Act 2002, the Committee informed the Minister of the Interior and Kingdom Relations and the Presidents of the two Chambers of the Dutch parliament of the intended investigations on 27 September 2007.

This report is accompanied by a classified appendix.

### **2. Organisation of the investigation**

The Committee's investigation was directed at the cooperation of GISS with a large number of foreign intelligence and/or security services. In this review report the Committee devotes attention to the general standards that foreign intelligence and/or security services must meet before GISS is permitted to cooperate with a service or to continue or intensify an existing cooperative relation. The Committee will also discuss the intensity and the development of cooperative relations maintained by GISS and the different ways in which cooperation with foreign services takes shape in actual practice. GISS cooperates in different degrees of intensity with a large number of foreign services; contact is maintained with more than 170 foreign services. For this reason the Committee's investigation was conducted based on random checks.

In addition, the Committee carried out a more in-depth investigation of the cooperative relations of GISS with a limited number of counterpart services. This investigation devoted attention to some close cooperative relationships existing of old, to a number of more recent close cooperative relationships and to relations with foreign services that were set up fairly recently.

The Committee examined the files at GISS. The file examination related to the cooperation of GISS with foreign services in the period from early 2005 until mid-2008. However, the

Committee's examination also included some files dating from before 2005 insofar as they related to GISS entering into new cooperative relations with foreign services or to important developments in cooperative relations. One file was investigated by the Committee right up to the moment when it prepared the present review report on 19 May 2009.

In addition to the file examination the Committee held a large number of interviews with officers of GISS, including lawyers, liaison officers, employees and managers of the Foreign Relations department, employees and managers of the various Directorates and the service management of GISS.

The review report has the following structure. Section 3 deals with the legal framework within which cooperation with foreign services must take place. Section 4 sets forth the responsibility of GISS for maintaining Dutch sovereignty. Sections 5 and 6 discuss the conditions set on entering into and maintaining cooperative relations with foreign services and how these are given shape in policy and practice at GISS. Section 6 also discusses a number of bilateral cooperative relations with foreign services. Sections 7 to 9 deal with various forms of cooperation – information exchange, assistance and joint operations. Cooperation for security screening purposes is the subject of section 10. Section 11 deals with multilateral cooperation in an institutionalized context. Section 12 deals with cooperation within the Kingdom of the Netherlands and section 13 with the coordination between GISS and DISS in the field of international cooperation. The conclusions and recommendations of the Committee are presented in section 14.

### **3. Legal framework**

Cooperation by GISS with foreign intelligence and security services is governed mainly by article 59 , ISS Act 2002, the first paragraph of which provides that the head of the service is responsible for maintaining contact with the appropriate intelligence and security services of other countries. Article 59 distinguishes between two kinds of cooperation, namely the provision of information (paragraph 2) and rendering technical and other forms of assistance (paragraph 4). Pursuant to this article both forms of cooperation may only take place if the interests to be served by the foreign services are not incompatible with the interests to be served by the Dutch service and if the cooperation is not incompatible with the proper performance of its statutory tasks by the Dutch service.

According to the legislative history of the ISS Act 2002 the assessment whether a conflict of interests exists is based among other things on Dutch foreign policy, including human rights policy.<sup>2</sup> Sometimes the interests to be served by GISS have been translated into expressly adopted government policy, for instance human rights policy, but often they have not. A multitude of interests is involved.<sup>3</sup> It is stated in both the law and its legislative history that GISS will perform its tasks in subordination to the law. This means that the interests to be served by GISS must be deemed to include the standards, and definitely also the fundamental and human rights standards, laid down in the Constitution and in the international conventions ratified by the Netherlands.<sup>4</sup>

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<sup>2</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 74.

<sup>3</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 8, p. 101.

<sup>4</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 65.

An example mentioned in legislative history of a situation in which the proper performance of its statutory tasks by the Dutch service is incompatible with cooperation with a foreign service is the situation where cooperation would frustrate the own ongoing operations of GISS. It is also pointed out that the type of assistance that is requested is relevant, too. It must, among other things, fit within the legal parameters to be observed by GISS. If a certain form of assistance is incompatible with those parameters, it would be contrary to the proper performance of its statutory tasks by the service if GISS were to provide the assistance notwithstanding.<sup>5</sup>

Article 36(1)(d), ISS Act 2002, provides that GISS is authorized to supply information to the appropriate intelligence and security services of other countries. The Explanatory Memorandum to the Bill containing the ISS Act 2002 shows that providing information to foreign services under article 59, ISS Act 2002, must be distinguished from providing information under article 36, ISS Act 2002. If information is provided under the former article, the interest of the foreign service is the guiding principle, whereas the provision of information under article 36, ISS Act 2002, takes place in connection with the proper performance of its statutory tasks by the Dutch service.<sup>6</sup> It follows from the legal history of the ISS Act 2002 that where information is provided to a foreign service under article 59, ISS Act 2002, this usually happens after the foreign service has made a request for the information, without GISS having a direct interest in providing it. Such a situation occurs, for example, when GISS does an administrative check in a security screening for the benefit of a foreign service and provides the results to the service (see also section 10). When information is supplied under section 59, ISS Act 2002, the guiding principle is the wish to maintain a good cooperative relationship with the foreign service. If, on the other hand, GISS does have a direct interest in providing the requested information to the foreign service, the performance of its statutory tasks by GISS is the guiding principle and according to legislative history the information must then be provided under article 36, ISS Act 2002. In most cases GISS provides information to foreign services under article 36, ISS Act 2002.

The provision of information is subject to the so-called ‘third party rule’, which says that information obtained from a counterpart may only be passed on to third parties if the service that originally provided the information has given permission to do so. This requirement has been incorporated in article 37, ISS Act 2002. According to the legislative history of the Act this rule is an essential condition for international cooperation:

“If a service cannot rely on the service in the addressee country keeping the information secret and using it exclusively for its own information, there can be no question of any real cooperation between the services concerned. If a service gets the impression that the rule is not observed, it will stop or marginalize the exchange of information with that counterpart.”<sup>7</sup>

Some intelligence and/or security services proceed on the basis of the ‘third country rule’, which gives a wider interpretation to the international rule. In principle the third country rule allows information originating from a foreign counterpart to be passed on between the intelligence and security services of the same country, unless the providing service has expressly precluded it. The ISS Act 2002 and its legislative history do not leave the Dutch intelligence and security services scope for applying the third country rule. So when a foreign service has thus obtained information from GISS and wishes to furnish this

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<sup>5</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 64.

<sup>6</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 8, p. 101.

<sup>7</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 57.



information to colleagues at another intelligence and/or security service of the same country, it requires the permission of GISS. The same applies in the Dutch situation. When GISS receives information from a foreign counterpart, it may only pass on this information to e.g. DISS if the foreign counterpart from which the information originates has given permission to do so.

Article 59(5) and (6) provide that technical assistance and other forms of assistance (article 59(4)), for example tailing and surveillance activities for the benefit of a foreign counterpart, may only be rendered with the permission of the Minister of the Interior and Kingdom Relations. The Minister may only grant the head of the service a mandate for giving such permission with respect to requests of an urgent nature (for example cross-border tailing and surveillance activities), with the proviso that the Minister must be informed immediately of any permission granted. According to the legislative history, power to give permission to render technical and other forms of assistance has been vested at this (high) level because of the potential political aspects that may be attached to rendering assistance.<sup>8</sup> If the Minister has given permission to assist a foreign service, the assistance is rendered by GISS under the responsibility of the Minister. It is not permitted to authorize a foreign service to operate independently on Dutch territory.<sup>9</sup> In principle, responsibility for intelligence activities on Dutch territory has been placed with the Minister of the Interior and Kingdom Relations and GISS. Responsibility for activities involving places in use by the Ministry of Defence lies with the Minister of Defence and DISS.<sup>10</sup>

It is mentioned in the legislative history of the Act that it has been agreed that GISS will maintain contact with civil intelligence and/or security services and DISS with defence intelligence and/or security services and with signals intelligence service. The heads of GISS and DISS will inform each other when they need to contact defence or civil services, respectively.<sup>11</sup>

#### **4. Maintaining Dutch sovereignty**

Activities of foreign intelligence and security services on Dutch territory that take place without the knowledge and involvement of GISS violate Dutch sovereignty.<sup>12</sup> According to legislative history the deployment of foreign agents on Dutch territory is only permitted if permission has been granted by the Minister of the Interior and Kingdom Relations or by GISS on his behalf<sup>13</sup> and subject to the conditions attached to the permission. If permission is granted for the deployment of foreign agents on Dutch territory, the foreign agents are deployed under the responsibility of the Minister and under the direction of GISS. Such an operation must always be considered a joint operation, with the foreign service acting as an equal partner. It is the responsibility of GISS, moreover, to monitor the operational activities of the foreign agents and to check whether they operate in conformity with the conditions

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<sup>8</sup> *Parliamentary Papers II 1999/2000*, 25 877, no. 8, p. 101 and no. 9, p. 37.

<sup>9</sup> *Parliamentary Papers II 1999/2000*, 25 877, no. 9, p. 38.

<sup>10</sup> The Act also provides for the possibility of DISS exercising special powers in spaces not in use by the Ministry of Defence, provided permission has been granted in consultation with the Minister of the Interior and Kingdom Relations. See articles 20(2), 22(2), 23(3), 24(2) and 25(3).

<sup>11</sup> *Parliamentary Papers II 1997/98*, 25 877, no. 3, p. 73.

<sup>12</sup> See also CTIVD Review Report no. 14 on the investigation by GISS into unwanted interference by foreign powers (including espionage), *Parliamentary Papers II 2006/07*, 29 924, no. 18 (Annex). Available in Dutch at [www.ctivd.nl](http://www.ctivd.nl).

<sup>13</sup> In the case of activities in places in use by the Ministry of Defence permission must be granted *mutatis mutandis* by the Minister of Defence or by the Director of DISS acting on his behalf.

imposed.<sup>14</sup> If employees of foreign services fail to comply with the conditions and develop secret activities, GISS must initiate appropriate measures. As a last resort, employees of foreign services who undertake unauthorized activities may be declared *personae non gratae* or undesirable aliens.<sup>15</sup> This drastic measure is taken only in very rare cases. Usually, GISS will take action against such behaviour in other ways, sometimes in collaboration with the Ministry of Foreign Affairs. In September 2008, for example, measures were taken against unwanted intelligence activities of the Moroccan intelligence service.<sup>16</sup>

The extent to which employees of foreign intelligence and security services on Dutch territory are monitored depends on the circumstances of the case. Among the factors determining the manner and degree of monitoring done by GISS are the gravity of the Dutch interests that may possibly be harmed, the intensity of the cooperative relationship maintained by GISS with the service in question and the proven reliability of this service in other fields. GISS will conduct targeted investigations into the activities of employees of foreign services that have given cause for doing so.<sup>17</sup>

In its monitoring of employees of foreign services GISS must seek a balance between the principle of trust on which cooperation between intelligence and security services is based and the importance of countering possible unwanted interference by these services. If GISS keeps too strict an oversight over the activities of employees of a foreign service in the Netherlands, it may harm the cooperative relationship with the service in question. If oversight is too limited, however, then GISS fails to meet its statutory responsibilities in this respect. Furthermore, when it is actually established that a foreign intelligence and/or security service is carrying out secret activities on Dutch territory and is thus violating Dutch sovereignty, it follows from legislative history that this fact precludes cooperation with the service concerned. The fact is that in such a case there is incompatibility with the interests to be served by GISS, which must be deemed to include safeguarding Dutch sovereignty, with the result that the foreign service in question no longer qualifies for cooperation.<sup>18</sup> In this situation it is important that GISS takes timely and appropriate measures.

GISS, in collaboration with DISS, has prepared a code of conduct for employees of foreign services, known as liaisons, who are stationed in the Netherlands. Liaisons have diplomatic status and are officially accredited with GISS. The code of conduct explains among other things that under current Dutch law GISS is responsible for the activities of liaisons of foreign services who are in the Netherlands and that unmonitored activities of foreign liaisons may pose a threat to the national security of the Netherlands. The code also lays down rules for the conduct of liaisons and the performance of operational activities. Among other things liaisons are expected to inform GISS about their activities both on request and at their own initiative, to refrain from contacts which may result in a conflict of interests and to adhere to the instructions given by GISS and to Dutch law. Liaisons are issued with a copy of the Intelligence and Security Services Act 2002 (the ISS Act 2002). The code of conduct states explicitly that operational activities may only be performed on the condition that the head of

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<sup>14</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 64.

<sup>15</sup> *Parliamentary Papers I* 2001/02, 25 577, no. 58a, p. 25.

<sup>16</sup> See for more information the letter from the Ministers of the Interior and Kingdom Relations and of Foreign Affairs to the Second Chamber about secret intelligence activities in the Netherlands, *Parliamentary Papers II*, 2008/09, 28 844, no. 25.

<sup>17</sup> CTIVD Review Report no. 14 on the investigation by GISS into unwanted interference by foreign powers (including espionage), *Parliamentary Papers II* 2006/07, 29 924, no. 18 (annex). Available at [www.ctivd.nl](http://www.ctivd.nl).

<sup>18</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 63.

GISS has been consulted and has given his permission and that the operational activities are performed in cooperation with and under the supervision of GISS. With regard to situations for which the code of conduct does not provide, a liaison must consult with the head of GISS. The Foreign Relations department of GISS is the primary contact for all foreign liaisons.

Accredited liaisons of foreign services are not the only persons who may be performing secret activities on Dutch territory. It does happen that employees of foreign services are active in the Netherlands but are not accredited with GISS. Also, foreign services sometimes try undertaking activities from outside the Netherlands which may result in violation of Dutch sovereignty.<sup>19</sup>

The Committee's investigation has shown that there is unwanted interference in the Netherlands by several foreign intelligence services, also by services with which GISS is cooperating more or less intensively. GISS regularly investigates indications of possible interference by foreign intelligence services and in certain cases conducts broad or in-depth investigations into unwanted activities. After identifying sovereignty violations by intelligence services of other countries, GISS usually takes timely action and appropriate measures tailored to the situation.

## **5. Criteria for cooperation**

Article 59(1), ISS Act 2002, imposes on the head of GISS a duty to maintain contact with the appropriate intelligence and security services of other countries. Proper cooperative relations with foreign services are essential for the adequate performance of tasks by GISS. They are essential because the information obtained by such cooperation considerably extends the information position of GISS and thus increases its capability to assess national security risks and give the responsible authorities timely warning.<sup>20</sup> It is especially since the attacks of 11 September 2001 that the need for international cooperation of intelligence and security services has emerged more clearly and the willingness to cooperate increased accordingly.

Cooperative relations between GISS and foreign services differ from one counterpart service to the next and are often liable to change. Cooperation is usually largely a matter of exchanging information. In addition, joint operations are carried out with certain counterparts and technical and other forms of assistance rendered. In addition, meetings of experts are held, for example of lawyers, technicians and other experts. Besides, services cooperate in the field of personnel education and training. The intensity and the frequency of cooperation within the different bilateral relations of GISS vary widely. A distinction can be made, for example, between cooperative relations of a mainly formal, *ad hoc*, tactical or operational nature. GISS may also cooperate closely with a foreign service in one specific area of activity while in other areas it exercises restraint.

In some cases cooperative relations have been institutionalised in more or less formal cooperative groups, in which intelligence and security services of various countries participate. These institutionalised multilateral cooperative groups will be discussed in greater detail in section 11.

According to legislative history it is as a rule the responsibility of the head of GISS to decide with which foreign services GISS will cooperate and how closely. The Minister of the Interior

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<sup>19</sup> See also the Annual Reports for 2008 and 2007 of GISS, which are available at [www.giss.nl](http://www.giss.nl).

<sup>20</sup> *Parliamentary Papers II* 1997/98, 25877, no. 3, pp. 73-74.

and Kingdom Relations must be informed of any cooperation and in the case of high-risk counterparts the decision-making must be submitted to the Minister. According to the legislature the rationale for this rule is that in the light of Dutch foreign policy, in which human rights constitute an essential factor, cooperation with high-risk counterparts may acquire an extra dimension calling for explicit political decision-making.<sup>21</sup>

In 2005, in reply to questions from a member of Parliament, Van der Laan (D66), the Minister of the Interior and Kingdom Relations (when an amendment to the ISS Act 2002 was discussed in parliament) explained the general requirements for cooperation with a foreign intelligence or security service:

“Cooperation takes place within the legal parameters and with due observance of Dutch foreign policy, including human rights policy. Prior to entering into a cooperative relation with a foreign intelligence or security service a number of matters are investigated. Inquiries are made as to the service's democratic anchorage, its tasks, professionalism and reliability. It is examined whether international obligations make cooperation advisable and to what extent it may assist the Dutch services in the proper performance of their statutory tasks. These factors are assessed together and in context. Based on this assessment it is decided whether GISS is going to cooperate and if so, what will be the nature and intensity of the cooperation. As is usual in international dealings, the relationship may range from intensive cooperation at case level to contacts that are in principle purely formal.”<sup>22</sup>

Earlier, in 1996, the issue of cooperating with foreign services was discussed in the Intelligence and Security Services Committee of the Second Chamber of Parliament (The ISS Committee).<sup>23</sup> It was stated then that the potential degree of reciprocity also played a role in the cooperation with foreign services.<sup>24</sup>

The various criteria for cooperation will now be discussed in greater detail.

### 5.1 *Democratic anchorage and respect for human rights*

Democratic anchorage and respect for human rights of a foreign service must play an essential role in decision-making about entering into and maintaining relations with that service. This follows naturally from article 59, ISS Act 2002, which provides among other things that cooperation with foreign intelligence and security services will only take place if the interests served by them are not incompatible with the interests to be served by GISS, which include the standards, and certainly also the fundamental and human rights standards, laid down in the Constitution and international conventions ratified by the Netherlands.

Whether or not a service has sufficient democratic anchorage depends on a number of factors. One can look, for example, at the general political system of the country in question and the position of the relevant service within the system, the statutory powers of and the

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<sup>21</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 8, p. 102 and *Appendix to the Proceedings II (Aanhangsel Handelingen II)* 2004/05, no. 749.

<sup>22</sup> *Appendix to the Proceedings II (Aanhangsel Handelingen II)* 2004/05, no. 749.

<sup>23</sup> The ISS Committee is currently constituted of the chairpersons of the political parties represented in the Lower House, with the exception of the chairpersons of breakaway groups that split off during the current parliament. The chairperson of the Socialist Party (SP) has also joined the IVD Committee from 1 May 2009.

<sup>24</sup> *Parliamentary Papers II* 1996/97, 25 418, no. 1, p. 2. The legislative history of the ISS Act refers to this document: see *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 63.

(independent) oversight over the service. With regard to the criterion of respect for human rights it can be investigated whether the country in question has ratified international human rights conventions and whether it observes these conventions in actual practice. It is also significant whether a foreign counterpart is being associated or has been associated with human rights violations. This can be investigated, for instance, by looking for mention of human rights violations in investigation surveys and reports of national and international human rights organisations.

In its report *De AIVD in verandering* [GISS in transition] the Committee for the Administrative Evaluation of GISS (Havermans Committee) made the following observation on how GISS applied the criteria of democratic anchorage and respect for human rights:

“These criteria are not sacrosanct, though, and it is possible to distinguish between different levels of cooperation. In some cases obtaining certain information may be more important than adhering to such criteria. Due to the current threat of terrorism these principles have become less dominant. Sometimes, the present diffuse threat situation calls for contacts with services that do not meet all the requirements.”<sup>25</sup>

It is the opinion of the Review Committee that GISS should exercise utmost restraint in cooperating with services of countries that have no or hardly any tradition of democracy and where human rights are violated (on a structural basis). In actual practice, however, precluding all and any cooperation with such services in advance could lead to undesirable and even disastrous situations. If such services possess information relating to a direct (terrorist) threat, it must be possible for GISS to apply to the services in question for information. Likewise, when GISS possesses indications of a concrete threat to another country, then for the purpose of preventing innocent victims it may be necessary to share information with the service or services concerned. This requires some degree of contact, albeit limited, between GISS and such services. The position that all cooperative relationships must be precluded in advance is indeed not supported by the ISS Act 2002 or its legislative history.

In his reply to Van der Laan's questions already cited above, the Minister discussed the use of information from foreign services that may have been obtained by torture. The Minister spoke of a differentiated approach to the issue of cooperating with foreign services: close cooperation with one service, while contacts with another service are purely formal. The Minister continues:

“One of the reasons to opt for this differentiated approach is that in actual cases it is impossible to find out whether information received from a foreign intelligence and security service may perhaps have been obtained by torture. Intelligence and security services keep their sources and their methods secret, also in their mutual dealings. Moreover, a service will never say they obtained information by torture. This uncertainty, however, may not result in the absolute preclusion in advance of all forms of cooperation with certain services. In a situation in which such a service possesses information concerning an immediate threat of a terrorist attack, such a preclusion could have disastrous consequences. We must therefore always keep communication channels with the appropriate services open.”

The Committee shares the view that in an actual case it is virtually impossible for GISS to find out whether information coming from a foreign intelligence or security service was obtained by torture. This makes it all the more important that GISS, before cooperating with

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<sup>25</sup> Committee for the Administrative Evaluation of GISS, *De GISS in verandering*, November 2004, p. 113.

a foreign intelligence or security service, assesses carefully to what extent the human rights situation in a country constitutes an obstacle to cooperation with the relevant service of that country. Besides, as the cooperative relation continues or changes, GISS will have to keep addressing the question up to which level it may cooperate with such a service and whether the intensity of the cooperative relation is not incompatible with the interests to be served by GISS. GISS must also be alert to possible side effects of cooperation, since it is not known how these services handle information obtained from GISS. If GISS suspects that a foreign service is using or will use information provided or to be provided by GISS for unlawful purposes, GISS must refrain from providing (further) information. Likewise, if GISS actually has concrete evidence that information obtained from a foreign service was obtained by torture, it will have to refrain from using this information. GISS will then have to terminate the substantive cooperation with the foreign service. It is only in highly exceptional emergencies that GISS may (or even must) depart from this rule. The Committee has not come across such a situation in its investigation.

The Committee has found that it is not always simple to assess whether an intelligence and/or security service of another country sufficiently satisfies the criteria of democratic anchorage and respect for human rights. It may happen that a foreign counterpart is careful about the rights of citizens, has clearly defined statutory powers and is at the same time controlled directly by and reports exclusively to the head of state in a country that has virtually no democracy. It may also happen that there are indications of human rights being violated in a country having a long-term democratic tradition. It is therefore not simply a matter of adding up a number of factors. For each foreign service GISS must make a well-considered assessment, not only when entering into a cooperative relation but also while an existing cooperative relation is intensified or changes in nature.

## *5.2 Tasks, professionalism and reliability*

The duties and responsibilities assigned to a foreign counterpart are an important factor in the assessment whether or not to enter into or intensify a cooperative relationship with the service. It is important, for example, to examine whether the foreign counterpart is an intelligence service that is predominantly externally oriented (towards collecting (political) information), a security service that is more internally oriented (towards identifying threats to national security to enable measures to be taken), or a combination of the two. In this context the difference between defence services and civil services is also relevant. Other factors that must also be weighed are the actual powers of a service, e.g. operational and executive powers, and whether or not a service, in addition to intelligence and/or security tasks, has investigative tasks as well. These factors determine the working methods of a foreign counterpart and may for example have consequences for the manner in which it will handle information provided by GISS.

The degree to which a foreign counterpart may be considered professional and reliable depends largely on the experience gained by GISS during its cooperative relation with the service in question. At the time of entering into a cooperative relation this criterion will therefore be less useful and will be difficult to apply, although GISS does in this context exchange views and experiences with other (friendly) counterparts, which may be helpful when assessing whether a foreign service is professional and reliable. Professionalism and reliability of a counterpart service are also important factors in the decision process whether or not to intensify cooperation with the service. If there are indications that a counterpart operates unprofessionally, GISS cannot and may not count on this counterpart adhering to

the agreements they have made. In that case their cooperation can be no more than superficial.

The Committee has found that the foreign services with which GISS maintains the closest cooperative relations are generally assessed to be highly professional and sufficiently reliable. The Committee draws attention to the fact that the assessment of the professionalism and reliability of a counterpart may be influenced by the person at GISS who does the assessment. In some cases intuitive factors, such as personal preferences, sympathies, recognisability and a sense of trust are more decisive than factual circumstances such as the expertise and technical capabilities of a service, the speed and carefulness with which information is exchanged et cetera. Furthermore, the person making the assessment does not always pay sufficient attention to the distinction between intelligence services and security services or to such tasks and responsibilities of a foreign service as can be objectively established. These observations of the Committee confirm a number of findings which, moreover, had already been made at GISS, too.

### 5.3 *Advisability in the context of international obligations*

According to the legislative history of the ISS Act 2002, Dutch foreign policy is one of the factors in assessing whether cooperation of GISS with a foreign intelligence or security service may involve a conflict of interests.<sup>26</sup> International obligations arising, for example, from membership of an international organisation or from international conventions ratified by the Netherlands must also be counted among the interests to be served by GISS. When entering into and maintaining contacts with foreign counterparts GISS must assess whether the international obligations of the Netherlands make it advisable to cooperate with the services in question.

The legislative history of the ISS Act 2002 shows that cooperation with foreign counterpart services of so-called 'high-risk countries' may, in the light of the foreign policy conducted by the Netherlands, have an additional dimension which calls for express political decision-making. According to the legislature it is evident that such a situation must be submitted for a decision to the responsible government member, in this case the Minister of the Interior and Kingdom Relations, and is not at the sole discretion of the head of GISS.<sup>27</sup>

The question arises whether cooperation of GISS with a counterpart service is possible if the Netherlands does not maintain diplomatic relations with the country in question, or if the international obligations of the Netherlands even preclude maintaining diplomatic relations with the country. The Committee considers that it may be in the interest of national security to keep the lines of communication with all foreign services open. In exceptional cases, moreover, when the usual diplomatic channels are closed, so-called 'silent diplomacy' may provide a solution. Usually, such 'silent diplomacy' is possible because of the contacts between intelligence and security services. One must not lose sight, however, of the fact that the services are bound by the parameters and restraints set by law. Keeping open the lines of communication with a specific foreign service does not mean that GISS may immediately start cooperating with it on a substantive level, for example by providing information in the context of the performance of its statutory tasks.

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<sup>26</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 74.

<sup>27</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 8, p. 102.

#### 5.4 *Enhancing the performance of its statutory tasks by GISS*

According to the legislative history of the ISS Act 2002, the adequate performance of its statutory tasks by GISS requires it to cooperate with counterpart services where this is possible.<sup>28</sup> When entering into or maintaining a cooperative relation with a foreign intelligence or security service GISS must therefore examine to what extent the cooperative relation benefits or may benefit the performance of its statutory tasks by GISS, as described in article 6(2), ISS Act 2002.

In principle GISS cooperates with a foreign intelligence and/or security service in the fields in which GISS and the foreign counterpart have interests in common. In his reply to questions from member of Parliament Van der Laan cited above in section 5, the Minister of the Interior and Kingdom Relations said:

“Cooperation is different for each country and each service and is limited to fields in which the Dutch and the foreign services have common interests.”<sup>29</sup>

It is the opinion of the Committee that the view, expressed by the Minister in this passage, that cooperation is limited to fields in which GISS and the foreign services have common interests, is contrary to the text and the purport of the Act. The fact is that in certain circumstances the Act allows GISS to provide information or render technical or other forms of assistance exclusively for the purposes of the interests to be served by the foreign counterpart, without the interests of GISS being served thereby. The guiding principle in this case is not the performance of tasks by GISS, but the interest that the foreign service has in cooperating. In this situation the cooperative relationship with the service in question and maintaining this relationship come first. Article 59 does, however, impose a restrictive condition, namely that the cooperation with a foreign intelligence and/or security service may only take place insofar as it is not incompatible with the interests to be served by GISS and the proper performance of its statutory tasks by GISS does not preclude the cooperation. These points will be discussed in greater detail in the sections on information exchange (section 7) and on technical and other forms of assistance (section 8).

#### 5.5 *Quid pro quo*

GISS cooperates with foreign services on the basis of the principle of *quid pro quo* or reciprocity. The basic principle is, to put it briefly, 'one good turns deserves another' and this is a maxim that applies in the world of intelligence and security. In the course of the legislative history of the ISS Act 2002 it has been stated that requests for information from foreign services must in principle be met with a positive attitude, in order to remain sufficiently ensured that requests for information made by GISS to the foreign services will meet with a similar attitude.<sup>30</sup> Complying with the requests from a foreign service thus serves the own national security, albeit indirectly.<sup>31</sup> This is the background of the authority of GISS to provide information and render assistance exclusively for the purposes of the interests served by a foreign service. The principle of reciprocity thus constitutes the basis for good international cooperation. Insofar as and wherever this is possible, intelligence and security services will assist each other. For GISS, the limits to such assistance lie in any case

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<sup>28</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 8, p. 101.

<sup>29</sup> *Appendix to the Proceedings II* 2004/05, no. 749.

<sup>30</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 74.

<sup>31</sup> *Parliamentary Papers I* 2001/02, 25 877, no. 58a, p. 24.



there where rendering assistance would be incompatible with the interests to be served by GISS and the proper performance of its statutory tasks by GISS.

Within these statutory restraints GISS must nevertheless guard against going too far in meeting requests for information from foreign counterparts. The fact is that it could lead to GISS having little new information to offer, so that it will be unable to exchange information until it has built up its store of information again. Keeping track of the *quid pro quo* balance – the quantitative and qualitative proportion between information provided and information obtained – is therefore essential for GISS's ability to determine its own position relative to that of counterparts. The *quid pro quo* balance also enables GISS to assess the added value of a cooperative relation and the extent to which the cooperation must be adjusted in order to achieve the intended proportion in the cooperative relation.

Taking stock of and monitoring the *quid pro quo* balance is a difficult task. It is difficult to determine in a quantitative sense how much is provided to or obtained from a particular counterpart. GISS cooperates with foreign counterparts in many different fields and on different levels. In addition to a quantitative assessment, it must also make a qualitative assessment. In doing so, GISS must assess the content of the information provided or received and its reliability as well as the importance attached to it by GISS at the correct level.

The Committee's investigation has shown that GISS has perceived that the *quid pro quo* balance could be put to better internal use. It is advisable, for example, to use an unambiguous weighting and assessment system that would make it possible to determine the proportion between what has been provided and what has been obtained in a particular cooperative relation. It is difficult, however, to develop a practicable and comprehensive method for doing this. It is also advisable to make the *quid pro quo* balance clearer and more accessible for employees so that the different teams within GISS can make more targeted and deliberate choices in their cooperation with foreign services, which will not only serve the interest of the team but also the interest of the service as a whole. GISS' intended objective of making better use of the *quid pro quo* balance is to make its cooperation and information exchange with foreign counterparts more purposive. GISS recently initiated some policy reforms to achieve this. The Committee applauds these initiatives. It notes that the initiatives underline the need for a central department, capable of keeping track of the cooperative relations and of adjusting them where necessary. GISS has allotted this role to the Foreign Relations department. The Committee will discuss this subject in greater detail in section 6.3.

## **6. Cooperation with foreign services**

### **6.1 Policy and practice at GISS**

Within GISS, the task arising from the responsibility of the head of GISS to maintain contact with intelligence and security services of other countries (article 59(1), ISS Act 2002) has been delegated to the Foreign Relations department. One of the tasks of this department is to make new contacts with foreign counterparts and maintain and develop existing bilateral cooperative relations. For this purpose it is important for the Foreign Relations department to have an overall picture of the cooperation with foreign counterparts so that it can, where necessary, adjust cooperative relations and monitor cooperation quality (see further section 6.3 below). The Foreign Relations department is not responsible for determining the policy of GISS in the field of international cooperation but it does make a contribution to this policy.

For example, the department frequently develops policy proposals and takes other initiatives. On the other hand, the Foreign Relations department is (co-)responsible for the implementation of international cooperation policy.

The policy of GISS on cooperation with foreign intelligence and security services is for the most part prepared in the Foreign Relations Consultative Body (*Buitenland Beraad*), a consultative body in which all directorates of GISS are represented. This service-wide consultative body advises the management of GISS on developments and incidents occurring in bilateral cooperative relations with foreign counterparts. It also shapes policies on developments taking place in the context of international policy talks and European cooperation and, where necessary, advises the service management in these fields. Ultimate decisions are taken by the management of GISS. In some cases the Minister of the Interior and Kingdom Relations is informed, for example about concrete cases of cooperation with services of which it is doubtful whether they satisfy the criteria for cooperation or about other cases that are politically sensitive.

Especially in the past few years many policy innovations or policy revisions in the field of international cooperation were initiated at GISS. In the course of the process GISS noticed among other things that there is insufficient consistency, service-wide, in the cooperation with various foreign intelligence and security services. GISS devoted attention, among other things, to designing a more strategic and targeted international cooperation policy, aimed at tighter monitoring and control of the implementation of the policy. When the Committee closed its investigation the policy adjustment process at GISS had not been fully completed yet.

GISS has not developed a decision-making procedure for entering into or intensifying cooperative relations with foreign services.<sup>32</sup> There is, however, a recent internal manual – compiled by the Foreign Relations department and a number of legal experts to be used in training new operational staff – which among other things comprises assessments that must be made before entering into or intensifying a cooperative relation.<sup>33</sup> This internal manual states that ultimately the head of GISS decides whether or not GISS may cooperate with a foreign service or whether a relation may be further developed. The internal manual does not make it clear whether the Foreign Relations department or the Foreign Relations Consultative Body plays a role in the decision process.

The internal manual is based on the assumption that GISS must in principle always keep open the possibility of cooperating. Cooperation with a counterpart should never be precluded in advance. According to the internal manual it depends on a number of factors whether GISS will cooperate, on which conditions it will do so and whether a relation will be further developed. The factors mentioned by the Foreign Relations department and the legal experts are the same as the criteria for cooperation emerging from the legal history of the ISS Act 2002 that were discussed above in section 5 of this report.<sup>34</sup> The internal manual states

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<sup>32</sup> Such a decision procedure exists exclusively for cooperation in the field of security screenings. For this purpose GISS has compiled information files for eight countries, containing an assessment if and to what extent it is permissible to cooperate with the services of the eight countries in question in security screenings. See section 10 for details.

<sup>33</sup> The assessments mentioned in this manual are for the most part identical with an older policy document of GISS (then called National Security Service) in the field of international cooperation dating from 2000.

<sup>34</sup> The criteria are the democratic anchorage and respect for human rights of the foreign service concerned, the tasks, professionalism and reliability of the foreign service, the advisability of the

that all of these factors must be assessed with each individual factor carrying more or less weight. This weighting then results in a decision to cooperate or not to cooperate with the foreign service concerned or a decision to intensify or not to intensify the cooperation.

According to the internal manual the first step of the process must be a balancing of interests. It must be assessed to what extent GISS and the foreign service have interests in common and whether a conflict of interests exists or major specifically Dutch interests are involved. The outcome of the balancing of interests, so the internal manual continues, must then be weighted against the other cooperation criteria. These other criteria are *inter alia* the democratic anchorage, the respect for human rights and the tasks, professionalism and reliability of the foreign service concerned. The outcome of the balancing of interests weighted against the other criteria determines the possible scope of cooperation between GISS and the foreign service concerned, in other words in which different fields GISS might cooperate with the counterpart. According to the internal manual this outcome is also decisive for the intensity of the cooperative relation. Intensity means how closely GISS may cooperate with the foreign service and what forms of cooperation are permitted. Finally, the rule applies that there are no eternal allies and no perpetual enemies.<sup>35</sup>

The Committee has investigated how and on what grounds decisions to enter into a cooperative relation in general or decisions to further develop a cooperative relation were in practice taken at GISS. The Committee's investigation has shown that in practice GISS often does not make the general assessments for entering into a cooperative relation mentioned in the internal manual or does so only to a limited extent. Decisions regarding the possibilities of commencing cooperative relations with foreign services are not made on a structural basis and for each foreign service individually. With respect to the foreign services with which GISS has entered into a cooperative relation since 2001<sup>36</sup>, GISS has insufficiently assessed the extent to which these services meet the criteria for cooperation and, consequently, the maximum scope and intensity permitted for the cooperation. With respect to cooperative relations that have been intensified since 2001, GISS likewise did only limited assessments using the weighting factors for cooperation. There is no overview of foreign services, accessible to GISS staff, giving information about the specific characteristics of the services concerned, the issues to be addressed regarding the possibility of cooperating with them and about how and on which conditions they may cooperate with these services. It is true that there are so-called information files for a number of countries and services which contain such information. But these were compiled with a view to cooperation for security screening purposes (see section 10) and are limited to a very small number of countries.

The Committee has found that in concrete operational cases GISS does assess whether a specific way of cooperating with a specific service in a particular situation is permissible. It does so, for example, when a target of GISS has contacts in another country and GISS wishes to obtain more information on these contacts. Another example is the situation that a target of GISS travels abroad and GISS wishes to keep track of the target's activities abroad. In such

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cooperation in the context of international obligations, enhancement of the performance of tasks by GISS and the principle of *quid pro quo*.

<sup>35</sup> "We have no eternal allies, and we have no perpetual enemies. Our interests are eternal, and it is our duty to follow them.", Palmerston, Henry John Temple.

<sup>36</sup> The Committee mentions this year because of the influence which the events of 11 September 2001 had and still have on intelligence and security services and the cooperation between the services. The powers of the Committee came into effect from 29 May 2002, the date on which the ISS Act entered into force.

cases GISS usually assesses whether in the specific case it is permissible to request the foreign service of the country in question to provide information based on the personal data of the target. In some cases GISS also makes assessments regarding certain forms of cooperation, for example the possibility of starting joint operations with a particular foreign service. It is the opinion of the Committee that GISS rightly includes the circumstances of the specific case in its assessment whether cooperation is permissible in a particular situation. The Committee draws attention, however, to the fact that the procedure of exclusively making such *ad hoc* assessments is too limited and may have undesirable consequences.

With such an *ad hoc* assessment approach, decisions whether or not to cooperate or cooperate more closely with foreign services in a particular case are not taken consistently on the basis of the same assessments and are taken at different levels. In most cases the decision will be taken by a processor, analyst or team leader, in other cases the decision will be taken in consultation with the director concerned and in some cases the decision process will go all the way up to the management of GISS. This may result in differences between the various teams and directorates of GISS as to the extent to which cooperation or certain forms of cooperation with particular foreign services are considered permissible and will therefore take place. It may also mean that comparable foreign services are assessed differently. Furthermore, it may happen that assessments made by a team, for example about requesting a foreign service for assistance, are inconsistent with similar assessments made at a much higher level, for example about rendering assistance to the same foreign service (see also section 8).

The Committee's investigation has further shown that where the possibility of cooperating with a particular foreign service in a specific situation is assessed at team level, the direct operational interests of the team sometimes predominate too much over other factors that should also play an important role. In some cases teams pay hardly any attention to other aspects of the cooperation which should in fact be considered, such as the respect for human rights or the reliability of the service with which the team wishes to cooperate. In other words and returning to what is said in the internal manual of GISS, it seems that teams often do in fact balance the interests involved in a concrete case. But subsequently the result in the actual case is insufficiently examined against all the other, more general criteria for cooperation which include the democratic anchorage, respect for human rights and the tasks, professionalism and reliability of the foreign service concerned and the advisability of cooperating with it in the context of international obligations (see also section 5).

The Committee considers it possible to overcome most of the aforementioned problems in the decision-making process on entering into or intensifying a cooperation relation. It is the opinion of the Committee that GISS must first make a fundamental assessment of the extent to which the criteria set for cooperation are satisfied and must do so at management level and for each individual foreign service separately. For each foreign service with which GISS cooperates it must be assessed to what extent the service may be considered professional and reliable, to what extent the service is democratically anchored, to what extent it respects human rights and so on and so forth. It must also be laid down, supported by reasons, which forms of cooperation are in principle permissible. In this way a careful and identical assessment is made for each of the different foreign services of the extent to which cooperation with them is permissible.

Subsequently, when a concrete (operational) case arises, the result of balancing the various interests involved can be examined against the general assessment of the foreign service. This method ensures that concrete operational interests are assessed in the context of the

general assessment of the counterpart service already done previously on the basis of the cooperation criteria. At the same time this will have the result that teams deciding independently in an actual situation whether they may cooperate with a foreign service, for example by providing information or starting a joint operation, must ensure that their decisions are in keeping with the prior assessment of the extent to which cooperation with the service is in principle permissible. If a team wishes, for compelling reasons, to carry cooperation with a particular counterpart further than is in principle permitted, thus giving rise to an exceptional situation, a reasoned decision on the matter will have to be taken at management level.

It is the opinion of the Committee that this system will do justice to both the restraints on cooperation with foreign services set forth in the law and legislative history, and daily practice in which actually cooperating with a counterpart may be essential to the adequate performance of its statutory tasks by GISS. The Committee observes in this context that this is not and indeed should not be a static process. While a cooperative relation with a foreign service continues and develops, GISS may at any time adjust the assessment of the service in question. But it must do so on the basis of the generally applicable criteria for cooperation, supported by reasons and at the proper level.

The Committee is aware that GISS may find itself in a situation in which it has an opportunity to start cooperating (operationally) with a foreign service in a specific case at short notice. Such an opportunity may occur *ad hoc*, without involving any intention of structural cooperation. Great interests may be involved, moreover. If no cooperative relation with the foreign service in question exists yet at that moment, it may be difficult for GISS to make a thorough and full assessment, within a period of time that may sometimes be very short, of the extent to which the foreign service meets the applicable criteria for cooperation and consequently of the forms of cooperation that are permissible. Nonetheless, the Committee takes the position that GISS must nevertheless make such an assessment. If it proves impossible in such a case to obtain an adequate picture of one or more aspects of the foreign service in question, these uncertainties must be identified and included in the assessment. If it appears that certain criteria for cooperation are not satisfied or if it is uncertain whether they are satisfied, this means in the opinion of the Committee that in principle certain forms of cooperation, such as providing personal data, rendering assistance and carrying out joint operations, are not permissible. If GISS wishes to carry the cooperation further than is in principle permitted in the specific case, the cooperation must in that specific case be founded on compelling (operational) interests that justify the cooperation and the Committee holds that it must be preceded by a reasoned decision of the service management. The Committee further holds the opinion that GISS should prevent such specific cooperation from setting a precedent and becoming the norm instead of the exception. Any future cooperation with the foreign service in question must again be examined against the general assessment of the criteria for cooperation and the forms of cooperation thus considered permissible.

The Committee recommends GISS to put in place a decision-making procedure for entering into or intensifying cooperative relations with foreign services that will ensure that the fundamental assessment of the extent to which the applicable criteria for cooperation are satisfied is carried out at management level for each foreign service individually.

## 6.2 *In-depth investigation of a number of cooperative relations*

In addition to the investigation by means of random checks of the cooperation of GISS with foreign intelligence and security services, the Committee conducted in-depth investigations of a number of cooperative relations maintained by GISS. For this purpose the Committee devoted attention to some close cooperative relationships existing of old, to a number of more recent close cooperative relationships and to relations with foreign services that were set up fairly recently. The Committee investigated the cooperation of GISS with both intelligence services and security services.

### 6.2.1 Close cooperative relationships existing of old

GISS cooperates with these counterparts in virtually all its working areas. It cooperates with the services at various levels, operational and analytical as well as more policy-oriented. In a number of fields or issues GISS cooperates very closely with these services. Obviously these are fields or issues in which both services have concrete intelligence or security interests and with respect to which they usually apply similar methods or views and/or possess complementary (technical) capabilities.

The Committee has found that by its nature GISS cooperates more smoothly with security services than with intelligence services. Cooperation with security services often concerns security interests shared by the two services and there is usually a certain degree of interdependence. Partly for these reasons, in the practical sense the cooperation generally proceeds without serious problems and as a rule the cooperation balance is fairly stable. Few problems can be identified in the cooperation and the two counterparts take an open attitude towards each other.

Cooperation with intelligence services on the other hand shows more ups and downs. The *quid pro quo* principle<sup>37</sup> very much dominates these cooperative relations with the result that the possibility of achieving cooperation with another intelligence service is determined to a great extent by what GISS has in the offering, in other words by its own information position. In addition to the common interests the two services, other and sometimes conflicting interests may play a role which affect the cooperative relation. Maintaining a balanced cooperative relation with these services requires a more strategic approach on the part of GISS. The Committee's investigation shows that GISS is increasingly devoting attention to this aspect of its relations with certain foreign intelligence services.

### 6.2.2 Close cooperative relations of a more recent nature

The Committee investigated cooperative relationships with foreign services that are (or can be) very close in certain investigation areas, while there is no long-term tradition of cooperation with these services. Cooperation with these services takes place in a more limited number of fields and issues and consists mainly of operational and analytical cooperation.

In recent years the cooperation with these foreign services has increased considerably, both in intensity and in volume. Cooperation in this category is characterized, however, by a

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<sup>37</sup> "One good turn deserves another", also known as the principle of reciprocity.

lower degree of trust and openness than in the category of foreign services discussed above. Partly as a result of this, problems or incidents that arise have a greater influence on the cooperative relation than in cooperative relations in which there is considerably greater trust and openness. For this reason it is all the more important to maintain a comprehensive overview of all aspects of cooperation throughout the service and to make adjustments where this is necessary.

The Committee considers that for some of these foreign services it may be open to doubt whether they satisfy one of the criteria for cooperation. For example, GISS may deem a foreign service less than reliable in some respects or hold that a counterpart has only limited democratic anchorage in the government system of its country. At the same time, however, it has no indications that it must be doubted whether these services meet the other criteria for cooperation. Moreover, the experience meanwhile gained by GISS in these cooperative relations has shown that these counterparts give effect to the cooperation in an adequate manner. In the fields in which GISS does cooperate with them it has a great interest in the cooperation.

### 6.2.3 Cooperative relations of relatively recent date

The Committee investigated a number of cooperative relations which recently showed quite considerable growth in a relatively short time. It is true that with some of these services GISS had already been in contact for some time, but cooperation with them never really got going in the past. It was particularly after the attacks in the United States in 2001 and after the Madrid attacks in 2004 that cooperation with these services was further developed. GISS increasingly cooperates operationally with these services and exchanges information or personal data with increasing frequency. Initially, cooperation with these services increased in the field of counterterrorism. This is indeed understandable since fighting cross-border terrorism entails a certain need for international cooperation. The Committee has found, however, that the cooperation of GISS with these foreign services is also increasing in other fields and areas of special attention.

As regards the cooperative relations investigated by the Committee, it is questionable to what extent the foreign services concerned meet the criteria for cooperation set out in legislative history. In particular there are doubts about the democratic anchorage of the foreign services concerned and doubts about the extent to which they respect human rights. As was discussed in section 6.1 above, the Committee considers it necessary that GISS makes a thorough assessment, for each of these cooperative relations, of the extent to which the criteria for cooperation set out in legislative history are satisfied.

### 6.3 *The role of the Foreign Relations department*

As stated above in section 6.1, within GISS the task arising from the responsibility of the head of GISS to maintain contact with foreign intelligence and security services has been delegated to the Foreign Relations department. This means that it is an important task of this department to (help) develop, maintain and safeguard the quality of these cooperative relations.

The Committee has established that in practice the role of the Foreign Relations department is chiefly a facilitating one. Among other things the department acts as point of contact for foreign liaisons stationed in the Netherlands and for GISS liaisons stationed abroad (see

section 6.4). Teams and departments that cooperate with foreign services can ask the Foreign Relations department for further information on the services concerned or obtain advice. Where necessary, the Foreign Relations department consults the legal experts of the Legal Department. The Foreign Relations department has e.g. compiled so-called information files on a small number of services which can be used in connection with cooperation for security screening purposes, which contain supplementary information that employees can consult. Moreover, staff members of the Foreign Relations department are present at certain meetings with counterparts, and internal policy prescribes that the department must be informed about any other meetings held with counterparts. Messages and requests received at GISS or sent to foreign services are usually seen by the department. In this way the Foreign Relations department tries to keep informed of the different relationships maintained by GISS with counterparts.

In performing its tasks the Foreign Relations department depends partially on the provision of information by and the cooperation of others. The Committee's investigation has shown that the teams and departments at GISS which cooperate with foreign services do not or did not always proceed expeditiously in informing the Foreign Relations department of their cooperation activities. The Committee has noticed some improvement on this point, though. However, involving the Foreign Relations department in, or adequately informing it of cooperation activities is still not an automatism in all cases. It is the opinion of the Committee that doing so should be automatic procedure.

Following naturally from the task of discharging the responsibility to maintain cooperative relations, the Foreign Relations department also has an important responsibility, wherever this is necessary, in bringing cooperation relations with foreign services into line with the policy in this field as formulated at GISS. In order to be able to do so the department must on the one hand have a sufficiently clear picture of the intensity of and the balance in the cooperative relations with these services. On the other hand it is important that the Foreign Relations department provides the various teams and departments with sufficient (proactive) steering and makes sure that the service-wide cooperation policy is implemented. A strong position of the Foreign Relations department in this matter can lead to uniformity in the cooperation of the teams and departments with foreign services. The Committee has found that in practice the steering role of the Foreign Relations department has not taken shape sufficiently.

The Committee points out that GISS recently prepared a number of rather critical policy documents which (among other things) addressed this subject. GISS noted e.g. that incoming and outgoing messages from and to foreign services should be subject to more supervision, that a need was felt for keeping a better overview of cooperative relations with foreign services and that better insight into the *quid pro quo* balance was advisable (see also section 5.5). A central and steering role of the Foreign Relations department is an important tool with respect to these problem areas. The Committee considers it advisable that GISS, for internal use, expressly lay down the different areas of responsibility of the Foreign Relations department insofar as this has not been done yet, and recommends GISS to ensure that internal policies are adequately implemented in practice.

#### 6.4 *Liaisons*

In order to improve the efficiency and effectiveness of its cooperation with foreign intelligence and security services GISS has stationed liaisons in twelve countries. Each liaison has a number of countries in his portfolio. Liaisons maintain contact with the intelligence



and security services of the countries within their operational area. Liaisons stationed abroad are attached to the respective Dutch embassies and accredited in that capacity with the authorities of the country concerned. An agreement has been concluded with the Ministry of Foreign Affairs which regulates the position of the liaisons in this context. GISS also has two travelling liaisons who maintain contacts with a large number of foreign counterparts while operating from the Netherlands.

The tasks of liaisons and the focal points within the positions vary between stations. Some stations are primarily political-strategic in nature while at other stations the emphasis is on operational cooperation with the foreign counterparts concerned. Liaisons act in the first place as intermediaries in the relations of GISS with counterparts. In addition, liaisons play a role in drawing attention to developments, threats and new opportunities in their respective operational areas.

Within the GISS organisation the liaisons are part of and functionally managed by the Foreign Relations department. Each liaison has a staff member at the department who acts as his or her contact. The operational activities of the liaisons are geared as much as possible to the needs of the teams in the different directorates of GISS. Operationally, the liaisons are managed mainly by means of concrete questions and instructions from the teams. Here, too, the Foreign Relations department plays a role. It is the policy at GISS that the relevant staff member of the Foreign Relations department is always involved in contacts between a team and the liaison. At the same time liaisons have a steering role with respect to the teams and in the cooperative relation with the foreign counterparts. Among other things this can take the form of the liaison adjusting and streamlining mutual expectations, looking at requests from the respective teams to counterparts and taking part in determining the approach or strategy to be adopted in the cooperation.

There are also liaisons of foreign counterparts who are stationed in the Netherlands. The Foreign Relations department is the primary point of contact for liaisons of foreign services on Dutch territory. Each liaison stationed in the Netherlands is issued with a code of conduct that has been drawn up by GISS and DISS jointly. The code contains rules stating which activities a liaison is permitted to undertake on Dutch territory. If a liaison wishes to carry out operational activities, the permission and involvement of GISS are absolute requirements. Liaisons are also issued with an English translation of the Intelligence and Securities Services Act 2002 (the ISS Act 2002). Secret operations (without the permission of GISS) of foreign services on Dutch territory were discussed above in section 4.

## **7. The exchange of information**

### *7.1 Legal framework*

GISS has authority to provide information to intelligence and security services of other countries pursuant to article 36(1)(d) and article 59(2), ISS Act 2002, respectively. Information is provided pursuant to article 36(1)(d), ISS Act 2002, in the context of the proper performance of its statutory tasks by GISS, as laid down in article 6(2)(2), of the Act. The provision of information pursuant to article 59(2) ISS Act 2002 is a different matter. In this case the guiding principle is not the performance of its statutory tasks by GISS, but the interest which the foreign service has in being provided with the information. Maintaining a good cooperative relation with the relevant foreign service comes first here. If GISS possesses information which may be important to a foreign service, but may not be provided under

article 36(1)(d) ISS Act 2002, it is nevertheless possible - under certain circumstances - to provide the information under article 59(2) ISS Act 2002.<sup>38</sup> An example is the situation where a foreign service requests GISS to provide information on a person or organisation whom or which GISS is not itself investigating. In such a case GISS may - under certain circumstances - provide the requested information to the foreign service even though this does not contribute to the performance of its statutory tasks by GISS. In most cases, however, GISS provides information to foreign services pursuant to article 36(1)(d), ISS Act 2002 .

Information may only be provided to foreign intelligence and security services within all of the applicable legal parameters. The legislature has set further criteria for the provision of information under article 59(2), ISS Act 2002. The same article provides that information may be supplied provided (a) the interests to be served by the counterparts are not incompatible with the interests to be served by GISS and (b) the proper performance of its statutory tasks by GISS does not preclude it. GISS performs its tasks in subordination to the law. This means that the interests to be served by GISS must be deemed to include the standards, and certainly also the fundamental and human rights standards, that are laid down in the Constitution and in the international conventions ratified by the Netherlands.<sup>39</sup>

The legislature has included general provisions on information processing in the ISS Act 2002, namely in articles 12 to 16. These articles lay down a general system of standards for GISS that must be observed in information processing (information processing is defined to include the provision of information).<sup>40</sup> For example, article 12(2), ISS Act 2002, provides that information processing is only permitted for a specific purpose and insofar as necessary for the proper implementation of the ISS Act 2002 or the Security Screening Act. Article 12(3), ISS Act 2002, provides that information processing must be done with proper and due care. Article 12(4) provides that information processed by GISS must be accompanied by an indication of the degree of reliability or a reference to the document or source from which the information has been derived. So GISS must also observe these standards when providing information to foreign intelligence and security services.

The legislature has made a clear distinction between *personal data*<sup>41</sup> and other information. This emerges clearly *inter alia* in the general provisions on information processing, which e.g. impose additional requirements on the processing of *personal data*. Pursuant to article 13(1) , ISS Act 2002, GISS may only process personal data relating to an exhaustive list of categories of persons set out in the same article 13(1). The distinction between personal data and other information is also manifest in the special provisions of articles 40 to 42, ISS Act 2002, pertaining to the supply of personal data to third parties. The legislative history of the ISS Act 2002 shows that the rationale behind this distinction is that even more than is already the case when GISS provides information in general, due care must be the prime consideration where it concerns the provision of personal data. This is all the more cogent if GISS provides information in the context of performing its statutory tasks with the aim of removing or reducing a detected threat. If the threat originates from a specific person, the provision of data relating to him may in practice result in measures being taken against him.<sup>42</sup> Pursuant

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<sup>38</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 8, p. 101.

<sup>39</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 65.

<sup>40</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 18-19

<sup>41</sup> Personal data is data relating to an identifiable or identified, individual natural person, article 1(e), ISS Act.

<sup>42</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 59.

to article 42, ISS Act 2002, GISS must keep records of every provision of personal data, known as the records protocol.

The legislative history of the ISS Act 2002 also makes a distinction between personal data and other information where it concerns the provision of information to foreign intelligence and security services. According to the legislative history special care must be exercised in providing personal data. Only a limited number of senior managers of the service are authorized to decide to provide personal data. If GISS wishes to provide personal data to a service of a country whose observance of human rights may be doubted, these personal data may be provided only if and to the extent that it is inevitable to do so in order to prevent innocent citizens from becoming victims of a terrorist attack.<sup>43</sup>

Compliance with the third party rule, as embodied in article 37 of the ISS Act 2002, likewise constitutes an important safeguard in the exchange of information between GISS and foreign intelligence and security services.

## 7.2 *Third party rule*

Information must be provided in conformity with what is known as the 'third party rule' which says that information obtained may only be provided to others if the service from which the information originates has given permission to do so. This requirement is laid down in article 37 of the ISS Act 2002. The legal history of the Act shows that this rule is an essential condition in international cooperative relations:

"If a service cannot rely on the service in the addressee country keeping the information secret and using it exclusively for its own information, there can be no question of any real cooperation between the services in question. If a service gets the impression that the rule is not observed, it will stop or marginalize the exchange of information with the relevant counterpart."<sup>44</sup>

Some intelligence and/or security services operate on the basis of the 'third country rule', giving a wider interpretation to the international principle. In principle the third country rule allows information originating from a foreign counterpart to be passed on between the intelligence and security services of the same country, unless the providing service has expressly precluded it. The ISS Act 2002 and the legislative history of the Act leave the Dutch intelligence and security services no scope for applying the third country rule.

Article 37(3), ISS Act 2002, provides that the relevant Minister or a person acting on his behalf may grant a foreign counterpart which has received information from GISS permission to pass on the information to others. It further provides that conditions may be attached to such permission, for example with respect to the nature and purpose of the use of the information.

Compliance with the third party rule constitutes an important safeguard in the cooperation between intelligence and security services. The rule contributes to source protection, the exchangeability of secret information and the mutual trust that forms the basis for a cooperative relation between intelligence and security services. In addition, the rule ensures control over the further distribution of information. This reduces the risk that information

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<sup>43</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 59, p. 16.

<sup>44</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 57.

coming from one single source will find its way to several parties, each of them passing on the information in their turn, thus making it subsequently appear as if the information originated from several sources. The uncontrolled further provision of information may also result in the loss of comments about the reliability of the information from the service that initially provided it.

Where information is provided in the context of multilateral cooperative groups in which intelligence and security services of various countries participate, it is usually stated expressly with which (group of) intelligence and security services the information may be shared.

The Committee has established that GISS conducts a policy of strict compliance with the third party rule in regard to information received from foreign counterparts. GISS' practical implementation of the policy is also adequate. In practice, there are likewise very rarely found to be problems with the observance of the rule by foreign intelligence and security services with respect to information provided by GISS. The Committee notes that in nearly all cases the third party rule is stated in writing in messages sent to foreign counterparts. Occasionally, however, the rule is communicated orally to the counterpart by the liaison delivering the message. In a few other cases the person who prepared the message omitted to state the condition. For due care purposes the Committee considers it important that the third party rule is expressly included in writing in messages to foreign intelligence and security services and recommends GISS to make it standard procedure to state the rule.

### 7.3 *Exchange of information in actual practice*

GISS exchanges information with a large number of services on all kinds of subjects. The information exchanged may range from very general information on certain themes and more in-depth analyses of phenomena to very concrete information on particular matters or persons. The major part of information exchange takes place by messages being sent and received via secured connections. Another important channel is the (oral) exchange of information on the occasion, for example, of bilateral visits, contacts maintained by the liaisons with the various services under their responsibility and attendance at multilateral meetings. With respect to all these forms of information exchange GISS must each time ask itself whether it is permissible to provide this specific information to this specific service or services in this specific case. The opposite may also apply. In some cases GISS must ask itself whether it can afford not to provide certain information.

GISS has formulated a number of basic principles for the provision of information to foreign counterparts, thus elaborating the concrete details of *inter alia* the general statutory provisions pertaining to the processing of information. In principle, for example, information is provided in writing, so that it is subsequently possible to verify who provided which information to which counterpart and at what time this happened. If information is provided at oral consultations, a report must subsequently be prepared of the meeting. Purpose limitation is also an important instrument when information is provided. GISS states what is the context of the information provided and the reason for providing it. It imposes the condition on the receiving service that the information may be used exclusively for the (intelligence) purpose for which it was provided. Where there is an indication that the information in question will be used for another purpose, GISS' internal policy prescribes that the information may not be provided. Moreover, the receiving service must observe the third party rule discussed above. When providing information, GISS must, in addition to the third party rule, also mention the reliability of the information.

Internal policy imposes the above basic principles as conditions for the provision of *personal* data to foreign services. Moreover, additional conditions have been formulated that are equivalent to the criteria for cooperation mentioned above. The principle of reciprocity (*quid pro quo*), for example, and the nature of the activities of a foreign service play a role in the decision whether or not to provide personal data. Yet another condition is that the interests of a foreign service may not be incompatible with the interests of GISS, which must be deemed to include observance of fundamental and human rights standards, and that the proper performance of its statutory tasks by GISS may not preclude the provision of personal data. Moreover, if there are indications that the provision of the personal data may lead to the violation of human rights, GISS may in principle not provide the information. Merely the country to which the foreign service concerned belongs may already constitute an indication. According to internal policy the conditions formulated by GISS may only be set aside *by way of rare exception*. This requires the existence of an unacceptable risk to society and its citizens that calls for prompt action. And it requires an *urgent necessity* to provide the personal data to the foreign service in question.

The internal policy of GISS further requires a proper assessment in each individual case – regardless of the service to which personal data are to be provided – whether it is permissible to provide the personal data. In its assessments concerning the provision of personal data GISS distinguishes between two categories of foreign intelligence and security services.<sup>45</sup> The first category comprises services from countries having a long democratic tradition, including a number of EU and NATO countries, and services of countries that do not have a (long) democratic tradition but do satisfy the criteria of professionalism, reliability and respect for human rights. According GISS policy, the second category consists of services for which there are clear indications that they do not satisfy one or more of the criteria of observance of human rights standards, reliability and sufficient professionalism. It is the opinion of the Committee that this category therefore covers all other foreign services – those which cannot be placed in the first category – of which it is questionable whether they satisfy the criteria for cooperation.

In principle, according to the policy of GISS providing personal data to foreign services in the first category does not pose a problem. The Committee shares the view that providing personal data to services falling in the first category is in principle permitted, provided all applicable statutory requirements are met including the requirements of necessity, appropriateness and due care. According to the policy of GISS, great restraint must be exercised in providing personal data to services falling in the second category. The Committee thinks this means that in principle *no* personal data are provided *unless* the rare exception occurs that is mentioned above. After all, if it is suspected that the foreign service in question does not observe human rights, is not reliable and/or operates unprofessionally, the conditions applying to the provision of personal data will not be satisfied either. Under current GISS policy these conditions may only be set aside by way of rare exception. This refers to cases involving an *urgent necessity* to provide the personal data to the relevant foreign service. The policy of GISS thus follows the statutory requirements applying to information processing and what is stated in the legislative history about the provision of personal data to services of countries whose respect of human rights is open to doubt.<sup>46</sup>

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<sup>45</sup> It is not always clear to the Committee, though, in which category certain services are placed by GISS (see also section 6.1).

<sup>46</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 59, p. 16.

When a team within GISS is conducting an investigation and wishes to share certain information (personal data or other information) with a foreign counterpart, the responsibility and power of decision lie in principle with the team leader. Under GISS policy the closeness of the cooperation with the foreign service concerned determines the nature and extent of the information exchange. As a rule GISS will provide information to foreign services with which it has a very close and intense cooperative relation more frequently and of a more substantive and sensitive nature than to counterparts with which GISS cooperates only occasionally. If the team has doubts about providing certain information to a specific counterpart, it must consult the Foreign Relations department and/or a legal expert before it may provide the information.

With respect to the provision of *personal* data, GISS also makes a distinction between the two categories of foreign services where it concerns the decision-making level. Decisions whether or not to provide personal data to services in the first category are taken by the team leader. In the case of the second category the internal rule is that the decision to provide personal data is in principle taken at director level. In rare exceptional cases – urgent necessity to provide personal data because of an unacceptable risk to society and its citizens that calls for prompt action – the internal policy prescribes that the decision to provide personal data be taken by the head of GISS. It is the opinion of the Committee that the provision of personal data to a foreign service in the second category always constitutes a rare exception.

The Committee's investigation has shown that in daily practice a processor or analyst in a team usually decides on his own whether or not personal data or other information will be provided to a foreign service. It depends on the appraisal and experience of the staff member concerned whether and in which cases the team leader is consulted. In cases that are (obviously) open to question the team leader is usually consulted. The Committee holds the opinion, however, that this practice does not do sufficient justice to the requirements imposed by the legislature on information processing, namely that it must be done with proper and due care (article 12(3), ISS Act 2002). The requirement of due care applies with even greater force in the case of the provision of *personal* data. It is the opinion of the Committee that decisions about providing personal data to counterparts should be taken at least at team leader level *in all cases* and not only when a processor or analyst is in doubt. This has meanwhile become adopted policy at GISS. The Committee further holds the opinion that in the case of personal data being provided on the basis of the aforementioned rare exception – urgent necessity to provide personal data because of an unacceptable risk to society and its citizens that calls for prompt action – the decision to do so must always be taken at service management level. The reason for this is that said exception, entailing disregard of individual human rights, applies only under exceptional circumstances. From a due care perspective it is advisable that in these circumstances decisions be taken at service management level. The Committee recommends GISS to bring its internal rules and practice regarding the provision of personal data to foreign services into line with this finding.

The Committee has established that GISS increasingly exchanges (personal) data with foreign intelligence and security services of which it is doubtful whether they satisfy the prescribed criteria for cooperation. This can be explained by the growing international (terrorism) threat, which has the result that from GISS' point of view it has become more advisable to exchange information with foreign counterparts, in certain cases even with services of which it is doubtful whether they satisfy the prescribed criteria for cooperation. In this context GISS is sometimes confronted with the question whether in a specific case it can afford not to provide (personal) data to a certain foreign service. At the same time, however, GISS must always consider to what limits the provision of (personal) data is lawful. The

Committee points out that in a certain field the assessments made by GISS on this issue are in practice increasingly stretching the limits. For the purposes of fighting terrorism, for example, it is sometimes deemed almost an automatism that (personal) data may be provided to foreign services of which it is doubtful whether they satisfy all the criteria for cooperation.

The Committee has established that in some cases GISS acted unlawfully<sup>47</sup> when it provided personal data to foreign intelligence and security services. In three of the cases which the Committee came across, GISS provided personal data to counterparts of which it is doubtful whether they satisfy the criteria for cooperation without the requirement of (urgent) necessity being satisfied. The Committee further came across two cases in which GISS sent along personal data of a person other than the person to whom the provision of data primarily related (third parties) without this being necessary. In one single case personal data was provided without the subsidiarity principle being satisfied and GISS could have used a less infringing means. Finally, the Committee came across one case in which personal data was provided to a foreign service of which it is doubtful whether it satisfies the prescribed criteria for cooperation, while GISS is no longer able to retrieve the reasons for providing the personal data.

The Committee holds the opinion that in some cases the assessment underlying decisions to provide personal data to foreign services of which it may be doubted whether they satisfy the prescribed criteria for cooperation is very limited in scope. In these cases little attention is paid to the possible risks and other adverse effects which the provision of personal data to a foreign service of which it may be doubted whether it satisfies the prescribed criteria for cooperation may entail for the person concerned. The Committee has established that in many cases the reasons for providing personal data to a foreign service are not laid down in writing.

The Committee has established that in seven cases personal data was provided to foreign services of which it may be doubted whether they satisfy the prescribed criteria for cooperation while no permission to do so had been given at the appropriate level. The Committee noticed that in many cases the permission to provide personal data to a foreign service is not laid down in writing. From a due care perspective the Committee considers it proper procedure for GISS to record the permission granted in writing.

The Committee has further found that in many cases when GISS provides information to foreign services it does not give any indication of the degree of reliability or a reference to the document or the source from which the information is derived. GISS thus does not comply with the provision of article 12(4), ISS Act 2002.

The Committee has found that in some cases it proved difficult for GISS to retrieve fully to which foreign services a message was provided. In this regard the Committee draws attention to the obligation imposed on GISS by article 42, ISS Act 2002, to keep records of the provision of personal data.

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<sup>47</sup> In the cases referred to here, the Committee reviewed whether GISS could reasonably have come to the decision to provide the personal data to the foreign service(s); GISS has a certain margin of discretion in this matter. The cases that the Committee considered unlawful are cases in which this margin was exceeded.

The Committee recommends GISS to exercise greater care in providing personal data to foreign services and to act in accordance with all the applicable statutory provisions as well as its own internal rules. The Committee also recommends that GISS, for due care purposes, keep written records of the thorough assessments that are or should be made prior to providing personal data to a foreign service of which it may be doubted whether it satisfies the prescribed criteria for cooperation. The Committee further recommends GISS to keep records of all permissions to provide personal data to a foreign service.

The Committee reflects that article 43, paragraphs (2) and (3), ISS Act 2002, provide, if information proves to be incorrect or is being processed wrongfully, that it must be corrected or removed. The relevant Minister must as soon as possible notify this fact to the persons to whom the information has been provided. The information removed must be destroyed, unless statutory provisions on the retention of information preclude it. Implementation of these provisions in the cases referred to above means that all personal data wrongfully provided to foreign services must be destroyed. The Committee points out, however, that the information wrongfully provided is not in the possession of GISS but of the foreign service(s) concerned. A recommendation to GISS will not lead to the intended objective of article 43, paragraphs (2) and (3), ISS Act 2002, namely the removal of the information wrongfully processed. For this reason the Committee in this case refrains from making a recommendation to such effect.



## 8. Technical and other forms of assistance

### 8.1 Legal framework

Pursuant to article 59(4), ISS Act 2002, GISS may, for the purposes of maintaining relations with foreign intelligence and security services, render technical and other forms of assistance to foreign services for the benefit of the interests to be served by these services. The legislative history of the Act shows that this provision was created because it was considered advisable to regulate not only the provision of information, but also other forms of cooperation with foreign services.<sup>48</sup> Rendering technical and other forms of assistance is made subject to similar conditions as those applying to the provision of information. Assistance for the benefit of the interests of a foreign service may only be rendered insofar as the interests to be served by the foreign service are not incompatible with the interests to be served by GISS (article 59(4)(a), ISS Act 2002) and insofar as the proper performance of its statutory tasks by GISS does not preclude rendering assistance (article 59(4)(b), ISS Act 2002). A distinction must be made between rendering assistance to a foreign service for the benefit of the interests served by the foreign service on the one hand and carrying out joint operations undertaken (partly) for the performance of its statutory tasks by GISS on the other hand.

An example mentioned in the legislative history of a situation in which the proper performance of its statutory tasks by the Dutch service is incompatible with assisting a foreign service is the frustration of ongoing operations of GISS itself. It is also observed that the kind of assistance that is requested is significant, too. It must, among other things, fit within the legal parameters to be observed by GISS. If a certain form of assistance is incompatible with those parameters, rendering the assistance nevertheless would be contrary to the proper performance of its statutory tasks by GISS.<sup>49</sup>

Assistance to foreign services often concerns the exercise of special powers, such as tailing and surveillance operations. GISS must fully observe the statutory regulations applying to the exercise of these powers, also when they are exercised to meet a request for assistance. This means that GISS must among other things satisfy the criterion of necessity laid down in article 18, ISS Act 2002.<sup>50</sup> In all cases, therefore, the exercise of a special power to assist a foreign service must always (also) be necessary for the proper performance of its statutory tasks by GISS as referred to in article 6(2), at a and d, ISS Act 2002 (the a-task and the d-task). The necessity referred to here is stricter than the necessity required for the processing of information by article 12(2), ISS Act 2002, which concerns necessity for the purposes of properly implementing the ISS Act 2002 or the Security Screening Act. When GISS renders assistance by exercising special powers it must, in addition, meet the requirements of proportionality and subsidiarity, as embodied in articles 31 and 32, ISS Act 2002. Foreign services rendering assistance to GISS will have to observe the rules applying to them in their respective countries, so the legislative history of the Act shows. Foreign services using means of intelligence in their own territory must observe the legal parameters applying to them.<sup>51</sup>

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<sup>48</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 9, p. 37.

<sup>49</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 64.

<sup>50</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 9, p. 38.

<sup>51</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 62.

It must therefore be assessed for each individual request for assistance whether the requested assistance fits within the prescribed parameters. That is why rendering assistance must be preceded by a written request from the foreign service concerned to GISS. Article 59(5), ISS Act 2002, provides that a request for assistance must be signed by the competent authority of the requesting foreign service and must give a detailed description of the desired form of assistance and the reason(s) why the assistance is requested.

Pursuant to article 59(5) and (6), ISS Act 2002, assistance may only be rendered with the permission of the Minister concerned. The Minister may only give the head of the service a mandate to give such permission with respect to requests of an urgent nature (for example cross-border tailing and surveillance activities), subject to the condition that the Minister be immediately informed of any permission granted. The power to give permission to render technical and other forms of assistance has been vested at this (high) level because of the potential political aspects which rendering assistance may entail.<sup>52</sup> If the Minister has given permission to assist a foreign service, the assistance is rendered under the responsibility of the Minister.<sup>53</sup>

## 8.2 *Rendering assistance in actual practice*

In the course of its investigation the Committee came across only a few cases of assistance rendered by GISS to a foreign service in which the permission of the Minister of the Interior and Kingdom Relations was expressly requested and granted. Each of these cases involved assistance to a service with which GISS had a close cooperative relation in situations that could be ranged under the a-task or the d-task of GISS but which had no connection with any assignment of one of the teams of GISS. The Committee has found evidence that the assistance by GISS was partly rendered in the form of exercising special powers. As was explained above, article 18, ISS Act 2002, provides that the exercise of a special power must (also) be necessary for the proper performance of the a-task or the d-task of GISS. It is the opinion of the Committee that in the cases mentioned above this necessity requirement was met. The Committee has also established that the forms of assistance rendered for the benefit of the foreign service concerned were not incompatible with the interests to be served by GISS (article 59(4)(a), ISS Act 2002) and that the proper performance of its statutory tasks by GISS did not preclude them (article 59(4)(b), ISS Act 2002).

The Committee has found that GISS only rarely considers certain forms of cooperation to be assistance within the meaning of article 59(4), ISS Act 2002, which requires the prior permission of the Minister of the Interior and Kingdom Relations. Assistance rendered independently of any specific team assignment is deemed to be assistance in this sense. Usually, GISS does not consider supporting forms of cooperation that *may* be ranged (whether or not indirectly) under a team assignment to be assistance within the meaning of article 59(4), ISS Act 2002. Examples are tailing and surveillance activities carried out at the request or instigation of a foreign service which have aspects in common with an investigation conducted by GISS in the performance of its own statutory tasks. GISS holds the view that these supporting forms of cooperation are also in the interest of GISS and for this reason it does not classify such activities as assistance within the meaning of article 59(4), ISS Act 2002. The Committee holds the opinion that the interpretation given by GISS to the term assistance pursuant to article 59(4), ISS Act 2002, is too narrow. In the opinion of the Committee the decisive criterion should not be whether a supporting activity may be ranged

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<sup>52</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 8, p. 101 and no. 9, p. 37.

<sup>53</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 9, p. 38.

under a team assignment, but whether the supportive form of cooperation can actually contribute to an ongoing investigation by GISS. If, for example, a foreign service requests GISS to render assistance by exercising a special power with regard to a target of the foreign service, it is the responsibility of GISS to examine whether the information that may be obtained by rendering the requested assistance can contribute to an investigation being conducted by GISS itself. This will e.g. be the case if GISS is also investigating the person concerned or if the person can be linked to persons or organisations being investigated by GISS. It is the opinion of the Committee that in such cases the supporting form of cooperation need not be regarded as assistance within the meaning of article 59(4), ISS Act 2002, but rather as part of a joint operation. If the supporting activities can make no contribution to an ongoing investigation of GISS, the activities will have to be regarded as assistance. GISS will then require the prior permission of the Minister before it may assist the foreign service (article 59(5), ISS Act 2002). The Committee has established that in the cases in which GISS rendered assistance to a foreign service within the meaning of article 59(4), ISS Act 2002, but did not regard it as such, it wrongly omitted to request the Minister of the Interior and Kingdom Relations for permission to render the assistance.

The Committee has established that GISS also does not range under article 59(4), ISS Act 2002, assistance rendered to foreign services not involving the exercise of special powers. An example is assistance in the form of a course or training or transfer of technical knowledge, rendered in the interest of the foreign service. Such forms of assistance, which are to be distinguished from the provision of information, are rendered by GISS with a view to continuing or intensifying a cooperative relation. It is the opinion of the Committee that formally these forms of assistance must be deemed to fall under article 59(4), ISS Act 2002, too. According to the legislative history of the Act, assistance *usually* involves the exercise of special powers.<sup>54</sup> This means that assistance may also involve the performance of activities other than the exercise of special powers by GISS. The examples given above expressly concern activities that serve to assist the foreign service in question and are performed in its interest. GISS has no interest whatsoever in performing these supporting activities other than its cooperation with the foreign service in itself. These cases are covered by article 59(4), ISS Act 2002.

The Committee takes the ground that in actual practice the above interpretation of the term assistance as used in article 59(4), ISS Act 2002, may lead to situations that are difficult to defend. The Committee does not hold the opinion, for example that the mere fact that a special power is exercised in the interest of and to assist a foreign service necessitates *in all cases* that the required permission be raised to ministerial level. If for example GISS performs (cross-border) tailing and surveillance activities for the benefit of foreign services – a power for which normally permission from a team leader will suffice – it is the opinion of the Committee that permission from the Minister is a disproportionately severe requirement. The Committee also takes the ground that the severity of the permission requirement of article 59(5) and (6), ISS Act 2002, may also not be proportionate to forms of assistance which do not involve the exercise of special powers, have hardly any politically sensitive aspects and do not violate any fundamental rights. In spite of the disproportion between these forms of assistance and the level at which permission is required to be given, the Committee holds the opinion that article 59(4), ISS Act 2002, and what is said in the legislative history of the Act about rendering assistance to foreign services leave insufficient scope for the interpretation given to the term assistance by GISS. The Committee recommends GISS to

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<sup>54</sup> *Parliamentary Papers II* 1999/2000, 25 877, no. 9, p. 38.

give a stricter interpretation to the term assistance within the meaning of article 59(4), ISS Act 2002, and to bring the internal (permission) procedures into line with that interpretation.

### 8.3 *Requests for assistance made by GISS*

GISS also makes requests for assistance to foreign intelligence and security services. It may, for example, request a foreign service to tail and/or keep under surveillance a GISS target when the target travels to the country of that service, or to tap his telephone. The ISS Act 2002 does not lay down rules for making requests for assistance to foreign services. According to the legislative history of the Act it is the responsibility of the foreign service and the other appropriate authorities in the country concerned to decide whether or not to comply with a request from GISS. If the foreign services render assistance to GISS, they will have to observe the statutory and regulatory provisions applying to them.<sup>55</sup> This does not mean that GISS may simply request all kinds of assistance provided the assistance is compatible with the rules applying to the foreign service. It is the opinion of the Committee that GISS may exclusively request a foreign service to exercise special powers which GISS itself is authorised to exercise, with due observance of the statutory requirements of necessity, proportionality and subsidiarity attached to the exercise of these powers. This is so because assistance by a foreign service at the request of GISS is rendered for the purposes of the proper performance of its statutory tasks by GISS. And GISS is bound to perform its tasks in accordance with the law (article 2, ISS Act 2002). It is the opinion of the Committee that a request from GISS to a foreign service to render assistance for the purposes of the performance of GISS' own tasks by exercising powers which GISS itself is not authorized to exercise or which does not satisfy the requirements of necessity, proportionality and subsidiarity, is unlawful.

No permission requirement for making a request for assistance has been embodied in either the law or an internal rule of GISS. It is usually a team leader who decides whether a foreign service will be requested to render assistance. In some cases the relevant director is involved in the decision making or the Foreign Relations department is consulted. In actual practice it proves to depend mainly on the team wishing to make the request whether this happens and in which cases. The Committee considers it advisable that the requirement of permission for making requests for assistance to foreign services be laid down expressly and recommends GISS to ensure that this is done. The requirement can be linked to the permission which normally speaking is required for exercising the power to which the request relates. For example, if the request is for assistance by tailing a person and/or keeping a person under surveillance, a team leader's permission to make the request will suffice. A request to a foreign service to tap a person's telephone will require permission from the Minister. Because of the required due care, permission to request the assistance of a foreign service of which it is doubtful whether it satisfies one or more criteria for cooperation will have to be granted at a higher level than permission to request the assistance of a foreign service with respect to which no doubts exists. The Foreign Relations department should be informed of such requests in advance.

The Committee has established that a number of requests for assistance in the form of exercising special powers made to foreign services of which it is doubtful whether they satisfy the prescribed criteria for cooperation did not satisfy the requirements of necessity, proportionality and/or subsidiarity. In three cases the request for assistance made to the foreign service could have such harmful consequences for the person(s) concerned as to be

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<sup>55</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 62.

disproportionate to the intended purpose of GISS. In two of these cases, moreover, it would have been sufficient for GISS to use a means less injurious to the person(s) concerned, for example not requesting the assistance of the foreign service but performing activities itself. It is the opinion of the Committee that GISS should not have requested the assistance of these foreign services of which it was doubtful whether they satisfied the prescribed criteria for cooperation.

The Committee has further established that some requests for assistance from GISS to foreign services are worded in a way that leaves the foreign service much scope for deciding how to act in meeting the request. The Committee also noticed that GISS does not always stipulate additional guarantees from the foreign services in question that may limit the potential detriment to the person(s) concerned. From a due care perspective the Committee believes that it would be better if GISS makes its requests for assistance to foreign services as explicit as possible and where possible states the limits of the requested assistance. The liaison who has the service in question in his portfolio can play a prominent role here. This will require that the arrangements made with the foreign service are recorded in detail.

The Committee recommends that GISS, prior to asking a foreign service for assistance by exercising special powers, makes a thorough assessment of the necessity, proportionality and subsidiarity of the request to be made and record the assessment in writing. The Committee deems it advisable that the obligation to state reasons in writing is expressly included in the permission procedure for requests to foreign services recommended by the Committee.

## 9. Joint operations

### 9.1 *Legal framework*

Joint operations with foreign counterparts are carried out on Dutch territory as well as abroad. In both cases GISS may only operate to the extent the current legal parameters permit. Legislative history shows that foreign service agents may only be deployed on Dutch territory if the head of GISS has given permission and subject to the conditions attached to the permission. If the (politically sensitive) nature of an operation and the accompanying potential risk factor so require, permission must be given in consultation with the responsible Minister. If permission to deploy an agent of a foreign service on Dutch territory is granted, the agent will operate under the responsibility of the Minister and under the direction of GISS.<sup>56</sup> Such an operation must always be considered a joint operation, with the foreign service acting as an equal partner. In addition, it is the responsibility of GISS to monitor the operational activities of the foreign service agent and check whether they are in accordance with the conditions set.<sup>57</sup>

Joint operations on Dutch territory may therefore only be carried out under the direct direction and actual control of GISS. GISS is responsible for ensuring that foreign counterparts operate in the Netherlands in accordance with the applicable rules. This means that GISS must ensure that the activities carried out by the services in joint operations are consistent with the interests to be served by GISS and besides are no impediment to the proper performance of its statutory tasks by GISS.

In a previous review report the Committee observed on this point that a certain degree of supervision by GISS over joint operations with foreign services is required so that GISS can monitor whether the operation is being carried out within the applicable legal parameters. The Committee further observed that under certain specific circumstances a more far-reaching form of supervision by GISS over such operations is needed. The Committee mentioned as examples of specific circumstances the deployment of foreign service agents on Dutch territory, or the involvement of human sources of GISS in a joint operation.<sup>58</sup>

### 9.2 *Joint operations in actual practice*

GISS carries out joint operations mainly with counterparts with which it has a long-term cooperative relation. In a few cases GISS started one or more joint operations with foreign services with which it has been cooperating only since fairly recently. For GISS, the reliability, professionalism and operational methods of a counterpart are important distinctive criteria for operational cooperation.

The Committee has investigated joint operations of GISS in the Netherlands as well as abroad. It has not emerged from the Committee's investigation that GISS, when carrying out joint operations with counterparts, failed to satisfy the conditions imposed on such operations by law and legislative history. All the joint operations that were investigated

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<sup>56</sup> With respect to activities in places in use by the Ministry of Defence these are *mutatis mutandis* the Minister of Defence and the Director of DISS.

<sup>57</sup> *Parliamentary Papers II* 2000/01, 25 877, no. 14, p. 64.

<sup>58</sup> CTIVD Review report no. 5B on the investigation by the Review Committee of the legitimacy of the investigation by GISS into the proliferation of weapons of mass destruction and means of delivery, *Parliamentary Papers II* 2005/06, 29 924, no. 5 (appendix). Available at [www.ctivd.nl](http://www.ctivd.nl).

satisfied the permission requirement and the Minister of the Interior and Kingdom Relations was consulted where necessary. The investigation also has not produced any indications that the activities of foreign counterparts in joint operations with GISS on Dutch territory conflicted with the interests to be served by GISS or with the proper performance of its statutory tasks by GISS. The subject of secret operations of foreign services on Dutch territory without the knowledge of GISS was discussed in section 4.

With regard to the period covered by the present investigation the Committee has not found any indications that GISS takes insufficient charge of or gives insufficient direction to joint operations with foreign services taking place (partly) on Dutch territory. In 2002, in an internal evaluation of its cooperation with a particular foreign service, GISS formulated a number of basic conditions for successful operational cooperation that could apply to all GISS operations. These conditions were elaborated into internal rules for joint operations, called *Joint Operations Guidelines*, which were approved by the GISS service management in 2007. The Guidelines include a number of items that must be considered when preparing for, entering into, carrying out or terminating operations performed in cooperation with foreign services. It is the opinion of the Committee that if the operational teams follow the Guidelines, this will help improve the supervision of joint operations with foreign services.

One of the items for consideration included in the Guidelines is the principle that the team or department carrying out a joint operation must always keep the Foreign Relations department informed. If there are reasons to depart from this principle, the head of the operation must contact the head of the Foreign Relations department. As was already noted above in section 6.3, the Foreign Relations department is not (sufficiently) informed in all cases. It is the opinion of the Committee that the (head of the) Foreign Relations department must in all cases be informed and kept informed of the operational cooperation with the foreign services, even in the case of a highly sensitive operational cooperation. It concerns not so much information about the substantive operational details but rather about things like the arrangements made with the counterpart, the reasons why the services cooperate and the interests involved, any problems encountered during the cooperation and the quality and quantity of the information obtained from or provided to the counterpart.

## **10. Cooperation for security screening purposes**

GISS also cooperates with foreign intelligence and security services for security screening purposes. Security screening precedes the issue or refusal of a declaration of no objection which is required for persons who are to hold a position involving confidentiality. If a person to be screened spent (a considerable) time abroad in the period before the screening, GISS depends to a large extent on information from foreign counterparts for its investigation of that period. GISS has a duty to make reasonable efforts to obtain the information necessary for a proper assessment.<sup>59</sup> If it proves impossible for GISS to obtain the necessary information by making a reasonable effort, it follows that the security screening has not produced sufficient information to enable GISS to make an assessment. The person concerned will then be refused a declaration of no objection. So it also serves the interest of the person involved in a screening that GISS cooperates properly with foreign services for security screening purposes. Pursuant to article 36(1)(d), ISS Act 2002, GISS may provide

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<sup>59</sup> See also CTIVD Review Report no. 11b on the investigation of the Committee into the implementation of the Security Screening Act by GISS, *Parliamentary Papers II* 2006/07, 29 876, no. 21 (annex). Can be consulted at [www.ctivd.nl](http://www.ctivd.nl).

information on a person to be screened to a foreign counterpart which can then perform an administrative check based on this information. At the request of a foreign service GISS may also, pursuant to article 59(2), ISS Act 2002, provide information about a person involved in a security screening conducted by that service.

With a number of foreign counterparts GISS exchanges information for security screening purposes on the basis of existing treaties on security issues. Examples are the WEU Security Agreement and the NATO Treaty.<sup>60</sup> In addition, information is exchanged for security screening purposes with foreign counterparts without an underlying treaty. Usually, however, GISS and the relevant counterpart lay down arrangements made between them in this regard in a memorandum of understanding or agreement. GISS does not maintain relations with every foreign intelligence and/or security service based on which it may provide and request information on parties involved in security screening. The reason for this is that personal data may only be provided with due care and sufficient safeguards (see also section 7). Before entering into a cooperative relation for security screening purposes GISS must therefore assess whether the counterpart concerned qualifies for such cooperation.

In January 2004 a procedure was included in the internal Manual of GISS for decision-making whether or not to cooperate with counterparts with which GISS does not or not yet have a security screening relationship. The Foreign Relations department compiles a country information file in which are recorded among other things background information on the country, an assessment of the criteria for cooperation, items for consideration (if any) and a cooperation recommendation to the service management. After being discussed in the Foreign Relations Consultative Body, the country information file is submitted to the service management of GISS for approval. After approval by the service management, GISS may cooperate with the service(s) of the country concerned for security screening purposes. In addition to this procedure the Manual of GISS also contains a list of countries with which GISS is cooperating for security screening purposes.

According to this internal procedure, GISS may only cooperate for security screening purposes with services giving the required priority to the observance of human rights and whose professionalism, reliability and democratic anchorage are not subject to doubts (see section 5 for a detailed discussion of these criteria). The principle of *quid pro quo* is also relevant here. If GISS cannot provide personal data for security screening purposes to a specific foreign counterpart, it will likewise not comply with requests for an administrative check for security screening purposes received from that foreign service. The procedure further provides that if doubts exist whether a foreign counterpart satisfies one of the aforementioned criteria, GISS should not request this service to provide information for security screening purposes. In such cases the nature of the cooperative relation is not so close that GISS can and may rely on the information provided by the security service in question. It may even be irresponsible, also with regard to the interest of the person concerned, to disclose in certain countries that a person is being considered for a position involving confidentiality.

In the course of its investigation the Committee examined all country information files. The Committee has found indications that in some cases the interest of GISS in cooperating with

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<sup>60</sup> See also the explanatory memorandum to the Policy Rule for insufficient information in security screenings at civil airports (*Beleidsregel onvoldoende gegevens bij veiligheidsonderzoeken op de burgerluchthavens*), Government Gazette 2001, no. 59.



a specific service for security screening purposes carries more weight than the requirements of reliability, democratic anchorage and observance of human rights. The specific joint interest of fighting terrorism in civil aviation is often mentioned in assessments leading to decisions to cooperate with services having limited democratic anchorage or of which it is questionable whether they observe human rights or provide information that is reliable in all cases. In some country information files, moreover, GISS takes the ground that it is possible to minimize the risks to the persons whose personal data is provided to the service in question by taking strict (procedural) precautionary measures. In some country information files, for example, GISS states that a request to the foreign service must state expressly that the request is exclusively for an administrative check of the person investigated and that the service may not do any field research. Since May 2007 the rule applies at GISS that all requests to foreign services must state that the addressee service should exclusively perform an administrative check. The country information files further state that it must also be stated expressly that the information provided in the request may not be used for purposes other than doing an administrative check and that the information may not be furnished to third parties without the prior permission of GISS. One important safeguard is the fact that the person being screened must sign a declaration of consent in which he gives permission to provide his personal data to the addressee service. The country information files also state that it will be examined in each individual case whether there are special circumstances making it inadvisable to provide information about the person being screened to the foreign service. No information will be provided about relatives of a person concerned. Initially, moreover, GISS will only cooperate in security screenings in the context of civil aviation because there the interests of GISS and the foreign services are synchronous. If experiences are positive, the cooperation can be extended to other kinds of security screenings.

It is the opinion of the Committee, when GISS cooperates in security screenings with foreign counterparts of which it is questionable whether they satisfy the prescribed criteria, that the protection of the person screened requires that GISS takes precautionary measures (as mentioned above) and applies them strictly. The Committee has established, however, that in actual practice the precautionary measures mentioned in the country information files were not always applied or applied strictly. Requests to foreign services with respect to which these precautionary measures are applicable do not always state that the foreign service may do an administrative check only and no field research. In one case the foreign service did in fact do field research. GISS called that foreign service to account for it. Since mid-2007 GISS applies the rule that all requests to foreign services must include a statement that the service may only do an administrative check. The Committee came across one case from a later date in which the statement was not included. The Committee recommends that GISS strictly apply the prescribed precautionary measures aimed at protecting persons involved in security screening and in all cases expressly include the conditions laid down with respect to foreign services subject to doubts in the written request.

The Committee's investigation has shown that GISS also cooperates for security screening purposes with services of which it may be doubted whether they satisfy the prescribed criteria, without the service management having given permission for the cooperation after following through a decision procedure. No precautionary measures have been laid down in a country information file with respect to these services. The Committee has also established that GISS already was or is cooperating with some services while the decision procedure had or has not been followed through yet. The Committee considers this improper and holds the opinion that GISS must always first follow through the decision procedure before it may start cooperating. The purpose of the procedure is precisely to arrive at a decision, assessed at service management level and supported by the Foreign Relations department and the

Foreign Relations Consultative Body, whether or not to cooperate with a foreign service for security screening purposes. The procedure provides that if the intended cooperation partner does not satisfy the criteria for cooperation, additional precautionary measures must be adopted to protect the persons whose personal data is furnished to the service concerned. It is the opinion of the Committee that this procedure does justice to the requirements set by the legislature on the provision of personal data, namely that the provision of such data must take place with due care and sufficient safeguards. The Committee recommends that GISS, before starting to cooperate with a foreign service for security screening purposes, first assess in accordance with the internal decision procedure whether the service qualifies for cooperation and if so, subject to which conditions.

The Committee has established that persons involved in a security screening who resided abroad for a certain period are not in all cases informed of the fact that their personal data may be provided to a foreign service. It is true that this possibility is mentioned in the explanatory notes to the (digital) Personal Information Form that persons subject to security screening must fill out.<sup>61</sup> But this fact is only expressly pointed out to them if GISS is going to make inquiries with foreign services of which it is doubted whether they satisfy the prescribed criteria for cooperation and with respect to which GISS has decided that additional safeguards must be provided. This is due to the fact that the approved country information files for these foreign services prescribe that GISS requires the consent of the person concerned before it may request the foreign service to provide information. No such requirement of consent from the person concerned applies to requests to foreign services about which no doubts exist. The Committee holds that it is in the interest of the persons concerned that they are expressly informed in all cases that GISS will possibly make inquiries with a foreign counterpart if they resided abroad for some time. The Committee recommends that GISS include a passage to this effect in the Personal Information Form which a person involved in screening must fill out and sign before GISS may start a security screening investigation.

The manual of GISS contains a list of countries with which GISS cooperates for security screening purposes, whether or not subject to conditions. The Committee notes that this list is outdated. The Committee has found that not all countries with which GISS actually cooperates are included in the list. For some countries it is expressly stated that GISS does not cooperate with them for security screening purposes while in actual fact it does. The Committee knows that the Security Screening department has an accurate and updated list. The Committee recommends, with a view to due care, that the list of the Manual, which is accessible to GISS employees, be brought into line and kept identical with the list at the Security Screening department.

The Committee remarks that sometimes GISS has to wait a long time before a foreign service replies to a request from GISS. Every request sent to a foreign service expressly states the time limit within which GISS would like to receive a reply. If the foreign service does not respond within the time limit stated, GISS sends a reminder and if necessary a second reminder at a later date. GISS evaluates cooperative relations on this point and in some cases it calls the foreign services to account on the matter. In this way GISS tries as far as possible

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<sup>61</sup> In the digital Personal Information Form each question is accompanied by an icon (a question mark) which, when clicked, leads to the explanatory note to the question. The text referred to here is found under the icon next to the question "Did you reside at another address at any time in the past [x number of] years?", stating that this includes addresses abroad.

to reduce the prolonged time that security screenings sometimes take to the statutory time limit of eight weeks.

## **11. Cooperation in an institutionalized multilateral context**

GISS also cooperates with intelligence and security services of other countries in more or less formalised cooperative groups. Such multilateral cooperation exists with European countries and has in a few cases been set up in an EU context. GISS also cooperates in the context of the North Atlantic Treaty Organisation (NATO). GISS participates in the NATO Special Committee, where the heads of the security services of the NATO member states discuss security-related issues. In addition, GISS in its capacity as National Security Authority plays a role within the Dutch delegation to the NATO Security Committee, the security body of NATO which develops the policy for securing classified NATO information. Multilateral cooperation also takes place in the context of the United Nations (UN). For example, GISS assists organisations within the UN (focusing on counterterrorism) by providing them with relevant information.

The Committee's investigation has shown that GISS makes an active contribution to several multilateral fora. These more or less institutionalized cooperative groups are particularly suitable for exchanging information and views between member services, and for coordinating policy choices in the field of national and international security in a broad sense. Operational cooperation is usually more often a bilateral matter. The Committee has noticed, however, that GISS is increasingly participating in ad hoc operational cooperation in (limited) multilateral context, in particular in the field of fighting terrorism. The interests of GISS in this field coincide with the interests of various other intelligence and security services, making the determination and implementation of a joint strategy an obvious course of action.

The following paragraphs contain a brief discussion of a number of European cooperative groups.

### **11.1 Joint Situation Centre (SitCen)**

SitCen, established in 2002, is a part of the EU Council Secretariat in which twenty European intelligence and security services cooperate and falls under the responsibility of the Secretary-General of the EU Council. SitCen functions as an alert mechanism for international crisis situations and provides (information) support for international operations. In addition, SitCen makes information and threat analyses to support EU policy-making, in particular the common foreign and security policy in the second pillar. SitCen provides information to various policy-makers both within the EU and in the Member States. The analyses of SitCen are used *inter alia* in various Council bodies such as the Political and Security Committee (PSC), the Terrorism Committee (COTER) and the Working Group on Terrorism (WGT). To a large extent, moreover, SitCen shares its terrorism reports with Europol. SitCen is (partly) dependent on the supply of information from the intelligence and security services involved. SitCen has the capability to combine information, compare perspectives and use the specialisms of the various intelligence and security services. This also has advantages in providing insight into transnational phenomena.

### 11.2 *Counter Terrorist Group (CTG)*

The CTG was established by the heads of a number of European security services after the attacks of 11 September 2001. The CTG has grown into an informal cooperation group made up of the security services of the EU countries plus Norway and Switzerland. Europol and the services of the United States have observer status at the CTG. The objective of the CTG is to intensify cooperation and information exchange in the field of counterterrorism between the security services of the participating countries. Within the CTG participants exchange information in the field of counterterrorism, prepare (threat) analyses - including a joint European threat assessment - and undertake operational cooperation. There were also frequent exchanges of information on the (foiled) attacks in the United Kingdom, Germany and Denmark. In CTG context the heads of the security services meet every six months. Meetings of directors responsible for counterterrorism are more frequent. The CTG was deliberately kept outside the EU system of council working groups and set up in a more informal setting. This allows the CTG to function as an independent forum at the level of service heads and directors responsible for counterterrorism and facilitates cooperation between the security services. A recurring question is how the European services can give greater visibility to the cooperation in the CTG without abandoning its independence and informal nature. At present, the analyses produced by the CTG are partially contributed to the working groups of the European Council. In addition, the CTG regularly gives presentations in the Permanent Representatives Committee (COREPER) at Brussels. In 2004 a link was set up between CTG and SitCen. The CTG supplies collective information on specific subjects and has a representative at SitCen, rotating every six months.

### 11.3 *Club de Berne (CdB)*

The CdB is an informal cooperative group of the heads of a large number of European security services and was established in 1965. Meetings of the CdB are held every six months. Security services of countries that are not (yet) part of the CdB may be admitted if all members agree. Decisions of the CdB are likewise taken unanimously. In addition to meetings of the heads of the services other events such as working groups, training sessions and expert meetings are organised in the context of the CdB. In principle, members cooperate in all the working areas of the security services. In a CdB context GISS initiated discussions on the future of security services. Developments in society such as growing interest in the public in security issues, concerns about privacy rights, increasing overlap between intelligence and investigation work and increasing EU regulation of security matters, all viewed in the light of the global terrorist threat, place greater emphasis on the visibility of and cooperation between security services. This demands the necessary adjustments of security services, both organisational adjustments and in the field of security.

### 11.4 *Middle European Conference (MEC)*

The MEC is a multilateral cooperative group of a number of West and Middle European intelligence and security services. The MEC was established after the Berlin Wall fell in 1989 for the purpose of providing support and assistance to the services of the Central European countries. The MEC functions as a platform for consultation and information exchange and contributes to the mutual trust between the affiliated intelligence and security services. In the past three years GISS was actively - though to a decreasing extent - involved with the MEC. With most of the services affiliated with the forum GISS also cooperates in the context of other informal groups.

## 12. Cooperation within the Kingdom of the Netherlands

Based on a long tradition, GISS cooperates with the Netherlands Antilles Security Service (NASS) and the Aruba Security Service (ASS). This cooperation for national security purposes has not been laid down by law. The Charter for the Kingdom of the Netherlands<sup>62</sup> (further referred to as the Charter) contains an exhaustive list of the affairs of the Kingdom (Articles 3 and 43(2) of the Charter). National security is not included in the list and must therefore be deemed to be a domestic affair of each of the individual countries of the Kingdom which autonomously manage their internal affairs, so Article 41(1) of the Charter provides. The intelligence and security services of the countries of the Kingdom therefore cooperate on an entirely voluntary basis. For this purpose GISS, NASS and ASS have concluded a cooperation agreement.

After the events of 11 September 2001 the countries of the Kingdom declared themselves in favour of intensifying cooperation between the countries in the field of international counterterrorism and adopted a joint declaration to this effect.<sup>63</sup> The closer cooperation is focused mainly on strengthening legislation and regulations in the field of fighting terrorism, intensifying police and judicial cooperation, building and maintaining an adequate store of information by the security services and enhancing monitoring and supervision of the financial sector. With regard to the third item the declaration states that an agreement will be concluded between the security services. This agreement, which *inter alia* lays down the countries' fundamental willingness to conduct joint investigations and exchange relevant information, was signed in March 2005. The agreement also provides a framework for cooperation in the field of security screening. The agreement is being put into effect among other things by the organisation of expert meetings and regular contacts between the heads of the services. The declaration further states that the countries may decide to set up ad hoc cooperation arrangements with a view to conducting specific investigations and that GISS will provide technical assistance to NASS and ASS. For example, GISS assisted NASS in a reorganisation process aimed at enabling NASS to improve its contribution to counterterrorism activities within the Kingdom. GISS also arranges training and traineeships in consultation with NASS and ASS.

The intelligence and security structure within the Kingdom will change on a number of points due to constitutional reforms. The country of the Netherlands Antilles will cease to exist. The islands St. Maarten and Curaçao will acquire country status within the Kingdom and in that capacity will become responsible for their own national security. The Netherlands Antilles Security Service (NASS), which has its head office on Curaçao, will be transformed into the Curaçao Security Service. St. Maarten wishes to establish a security service of its own. Bonaire, St. Eustatius and Saba, also known as the BES islands, will have a special position giving them a direct tie with the Netherlands. Within the Netherlands form of government the BES Islands will each be set up as a public body and will thus come to fall under the full responsibility of the Netherlands. The Final Declaration on the future political position of the BES island<sup>64</sup> does not include agreements on national security or the intelligence and security structure in the new situation. It was agreed, though, that upon the introduction of the new government structure the Antillean laws currently in force on the islands will be gradually superseded by Dutch law, with or without adjustment to the

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<sup>62</sup> *Bulletin of Acts and Decrees* 1995, 233.

<sup>63</sup> *Government Gazette* 2002, no. 10, p. 7.

<sup>64</sup> Annex to *Parliamentary Papers II* 2006/07, 30 800 IV, no. 5.

specific situation on the islands. In this context the Intelligence and Security Services Act 2002 (the ISS Act 2002) will obviously enter into effect on the BES islands as well. The tasks and responsibilities of GISS and the oversight over this service will then also extend to include the BES islands. This means that the Committee's reviews will cover a wider territory as well. A proposal amending the ISS Act 2002 in connection with the constitutional changes is currently being prepared.

### 13. Coordination between GISS and DISS

It is stated in legislative history that it has been agreed that GISS will maintain contacts with civil intelligence and security services and DISS with defence intelligence and security services and with liaison intelligence services. Where the performance of the services' tasks so requires, the heads of GISS and DISS inform each other when it has to contract defence or civil services, respectively.<sup>65</sup>

The Agreement laying down further rules for the cooperation between GISS and DISS includes an article on international cooperation.<sup>66</sup> It provides *inter alia*:

'GISS and DISS maintain international contacts, each on the basis of its own mandate. The head of GISS and the director of DISS inform each other periodically about their international contacts to safeguard that the interests to be served by the services are not harmed.

In actual practice it is sometimes difficult to distinguish between civil and defence intelligence and security services. Not all countries have an exclusively civil and an exclusively defence intelligence and/or security service. Often there is an internally oriented security service and an externally oriented intelligence service. Where these foreign services employ both civilian and military personnel, it is difficult to determine which service must be deemed to be a civil service and which one a defence service.

On the whole, GISS and DISS each have a different network of counterparts with which they cooperate. In practice, however, it is not the case that GISS cooperates exclusively with civil services and DISS maintains contacts exclusively with defence services. The Committee endorses the view that such a strict separation of the services' contacts is indeed not feasible in practice. Even where it is possible to distinguish between civil and defence services in another country, it may still be important for the performance of their respective tasks that GISS and DISS maintain contact or cooperate with that country's defence service or civil service, respectively.

In order to safeguard that the interests to be served by GISS and DISS are not affected and that the services are not hampered in the proper performance of their tasks, a certain degree of coordination between GISS and DISS is necessary. It is particularly important in this context that the services inform each other of the contacts they are maintaining with counterparts in other countries with which both of them cooperate. This is not only necessary to prevent GISS and DISS from unintentionally hindering each other but also to present a united face to the outside world and avoid a situation in which foreign counterparts can play them off against each other and unintended rivalry can arise at the expense of the cooperation. The need for cooperation with foreign counterparts is all the more important where GISS and DISS jointly carry out operations in cooperation with foreign services.

In this investigation the Committee has not found any indications that in practice, the cooperation of GISS and DISS with foreign services was insufficiently coordinated or that this led to problems.<sup>67</sup> Contacts between GISS and DISS are frequent, both at management

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<sup>65</sup> *Parliamentary Papers II* 1997/98, 25 877, no. 3, p. 73.

<sup>66</sup> *Government Gazette* 2006, no. 35, p.11.

<sup>67</sup> See also, however: CTIVD Review Report no. 5B on the Review Committee's investigation into the legitimacy of the investigation by GISS into the proliferation of weapons of mass destruction and means of delivery, *Parliamentary Papers II* 2005/06, 29 924, no. 5 (annex). To be consulted at [www.ctivd.nl](http://www.ctivd.nl).

level and between employees at the operational level. The two services cooperate to a greater or lesser extent in all areas of attention and operational areas that the services have in common. This makes it fairly feasible for the two services to achieve a certain degree of coordination. GISS and DISS regularly consult with each other about their international contacts and how they deal with their foreign relations. Insofar as the third-party rule permits, GISS and DISS share information obtained from counterparts that may be relevant to the other service and do so actively, i.e. on their own initiative. GISS and DISS also coordinate operations in which the two services operate jointly in cooperation with foreign services. In this regard, too, the Committee has not found any evidence that in actual practice the coordination between the two services created obstacles in the cooperation or otherwise led to problems.

#### **14. Conclusions and recommendations**

- 14.1. The Committee's investigation has shown that there is unwanted interference in the Netherlands by several foreign intelligence services, also by services with which GISS is cooperating more or less intensively. After identifying sovereignty violations by intelligence services of other countries, GISS usually takes timely action and appropriate measures tailored to the situation. (section 4)
- 14.2. It is the opinion of the Committee that GISS should exercise utmost restraint in cooperating with services of countries that have no or hardly any tradition of democracy and where human rights are violated (on a structural basis). The position that all cooperation should be precluded is not supported by the ISS Act 2002 and the legislative history of the Act and could, in practice, lead to undesirable and even disastrous situations.  
The Committee shares the view that in an actual case it is virtually impossible for GISS to find out whether information coming from a foreign intelligence or security service was obtained by torture. This makes it all the more important that GISS, before and while it cooperates with a foreign intelligence or security service, assesses carefully to what extent the human rights situation in a country constitutes an obstacle to cooperation with the relevant service of that country.  
It is the opinion of the Committee that if GISS suspects that a foreign service is using or will use information provided or to be provided by GISS for unlawful purposes, GISS must refrain from providing (further) information. Likewise, if GISS actually has concrete evidence that information obtained from a foreign service was obtained by torture, it will have to refrain from using this information. GISS will then have to terminate the targeted cooperation with the foreign service. It is only in highly exceptional emergencies that GISS may (or even must) depart from this rule. The Committee has not come across such a situation in its investigation. (section 5.1)
- 14.3. The Committee has found that the foreign services with which GISS maintains the closest cooperative relations are generally assessed to be highly professional and sufficiently reliable. (section 5.2)
- 14.4. The Committee considers that it may be in the interest of national security to keep the lines of communication with all foreign services open. Keeping open the lines of communication with a specific foreign service does not mean that GISS may immediately start cooperating with it on a substantive level. (section 5.3)



- 14.5. The Committee has found that taking stock of the *quid pro quo* balance and keeping it up to date is a difficult task. GISS recently initiated some policy reforms to make better internal use of the *quid pro quo* balance. The Committee applauds these initiatives. The Committee notes that the initiatives underline the need for a central department, which is capable of keeping track of the cooperative relations and, where necessary, adjusting them. (section 5.5)
- 14.6. The Committee has established that in practice GISS often does not make the general assessments whether or not to enter into a cooperative relation or does so only to a limited extent. There is no structured decision making for each individual foreign service separately on the possibilities of entering into a cooperative relation with the foreign service.
- The Committee has established that in concrete operational cases GISS does assess whether a specific way of cooperating with a specific service in a particular situation is permissible. It is the opinion of the Committee that GISS rightly includes the circumstances of the specific case in its assessment whether cooperation is permissible in a particular situation. The Committee draws attention, however, to the fact that the procedure of exclusively making such *ad hoc* assessments is too limited and may have undesirable consequences.
- It is the opinion of the Committee that GISS must first make a fundamental assessment of the extent to which the criteria set for cooperation are satisfied and must do so at management level and for each individual foreign service separately. Subsequently, in a concrete (operational) case the result of balancing the various interests involved can be examined against the general assessment of the foreign service. It is the opinion of the Committee that this system will do justice to both the restraints on cooperation with foreign services set forth in the law and legislative history, and daily practice in which actually cooperating with a counterpart may be essential to the adequate performance of its statutory tasks by GISS.
- The Committee observes in this context that this is not and should not be a static process. While the cooperative relation with a foreign service continues and develops, GISS may at any time adjust the assessment of the service in question. But it must do so on the basis of the generally applicable criteria for cooperation, supported by reasons and at the proper level.
- The Committee recommends GISS to put in place a decision-making procedure for entering into or intensifying cooperative relations with foreign services which will ensure that the fundamental assessment of the extent to which the applicable criteria for cooperation are satisfied is carried out at management level for each foreign service individually. (section 6.1)
- 14.7. The Committee has found that by its nature GISS cooperates more smoothly with security services than with intelligence services. (section 6.2.1)
- 14.8. In recent years the cooperation with foreign services with which GISS has no long-term tradition of cooperation but does cooperate intensively in certain investigation areas has increased considerably, both in intensity and in volume. (section 6.2.2)
- 14.9. Relations with services of which it can be doubted whether they satisfy the criteria for cooperation were further developed, in particular after the attacks in the United States in 2001 and after the attacks in Madrid in 2004. Initially, cooperation with these services increased in the field of counterterrorism. (section 6.2.3)

- 14.10. The Committee has found that in actual practice the Foreign Relations department plays a role that is chiefly facilitating.  
The Committee's investigation has shown that the teams and departments within GISS which cooperate with foreign services do not or did not always proceed expeditiously in informing the Foreign Relations department of their cooperation activities.  
Committee has found that in practice the steering role of the Foreign Relations department has not taken shape sufficiently.  
The Committee considers it advisable that GISS, for internal use, expressly lay down the different areas of responsibility of the Foreign Relations department insofar as this has not been done yet, and recommends GISS to ensure that internal policies are adequately implemented in practice. (section 6.3)
- 14.11. The Committee has established that GISS conducts a policy of strict compliance with the third party rule in regard to information received from foreign counterparts. GISS' practical implementation of the policy is also adequate. For due care purposes the Committee considers it important that the third party rule is expressly included in writing in messages to foreign intelligence and security services and recommends GISS to make it standard procedure to state the rule. (section 7.2)
- 14.12. It is the opinion of the Committee that decisions about providing personal data to counterparts should at least be taken at team leader level in all cases. This has meanwhile become adopted policy at GISS. The Committee further holds the opinion that in the case of personal data being provided by way of rare exception - urgent necessity to provide personal data because of an unacceptable risk to society and its citizens that calls for prompt action - the decision to do so must always be taken at service management level. The Committee recommends GISS to bring its internal rules and practice regarding the provision of personal data to foreign services into line with this. (section 7.3)
- 14.13. The Committee has established that GISS increasingly exchanges (personal) information with foreign intelligence and security services of which it is doubtful whether they satisfy the prescribed criteria for cooperation. The Committee points out that in a certain field the assessments made by GISS on this issue are in practice increasingly stretching the limits. (section 7.3)
- 14.14. The Committee has established that in some cases GISS acted unlawfully when it provided personal data to foreign intelligence and security services. In three cases GISS provided personal data to counterparts of which it is doubtful whether they satisfy the criteria for cooperation without the requirement of (urgent) necessity being satisfied. In two cases, moreover, GISS sent along personal data of a person other than the person to whom the provision of data primarily related (third parties) without this being necessary. In one single case personal data was provided without the subsidiarity principle being satisfied and GISS could have used a less infringing means. Finally, the Committee came across one case in which personal data was provided to a foreign service of which it is doubtful whether it satisfies the prescribed criteria for cooperation, while GISS is no longer able to retrieve the reasons for providing the personal data.  
The Committee recommends GISS to exercise greater care in providing personal data to foreign services and to act in accordance with all the applicable statutory provisions as well as its own internal rules. (section 7.3)

- 14.15. The Committee holds the opinion that in some cases the assessment underlying decisions to provide personal data is very limited in scope and has established that in many cases the assessment has not been laid down in writing. The Committee recommends that GISS, for due care purposes, keep written records of the thorough assessments that are or should be made prior to providing personal data to a foreign service of which it may be doubted whether it satisfies the prescribed criteria for cooperation.
- 14.16. The Committee has established that in seven cases personal data was provided to foreign services of which it may be doubted whether they satisfy the prescribed criteria for cooperation while no permission to do so had been given at the appropriate level. The Committee has further established that in many cases the permission to provide personal data has not been laid down in writing. The Committee recommends that GISS, for due care purposes, record in writing any permission given to provide personal data to a foreign service (section 7.3)
- 14.17. The Committee has found that in many cases when GISS provides information to foreign services it does not give any indication of the degree of reliability or a reference to the document or the source from which the information is derived. GISS thus fails to comply with the provision of section 12(4), ISS Act 2002. (section 7.3)
- 14.18. The Committee has found that in some cases it proved difficult for GISS to retrieve fully to which foreign services a message was provided. In this regard the Committee draws attention to the obligation imposed on GISS by article 42, ISS Act 2002, to keep records of the provision of personal data. (section 7.3)
- 14.19. The Committee has found that GISS only rarely considers certain forms of cooperation to be assistance within the meaning of article 59(4), ISS Act 2002, which requires the prior permission of the Minister of the Interior and Kingdom Relations. The Committee holds the opinion that the interpretation given by GISS to the concept of assistance pursuant to article 59(4), ISS Act 2002, is too narrow. In the opinion of the Committee the decisive criterion should not be whether a supporting activity may be ranged under a team assignment or may have aspects in common with an investigation, but whether the supportive form of cooperation can actually contribute to an ongoing investigation by GISS.  
The Committee has established that GISS also does not range under article 59(4), ISS Act 2002, assistance rendered to foreign services without involving the exercise of special powers. It is the opinion of the Committee that these forms of assistance must formally be deemed to fall under article 59(4), ISS Act 2002, too.  
The Committee has established that in the cases in which GISS rendered assistance within the meaning of article 59(4), ISS Act 2002, to a foreign service but did not regard it as such, it wrongly omitted to request the Minister of the Interior and Kingdom Relations for permission to render the assistance.  
The Committee recommends GISS to give a more stringent interpretation to the term assistance within the meaning of article 59(4), ISS Act 2002, and to bring the internal (permission) procedures into line with the stricter interpretation. (section 8.2)
- 14.20. The Committee has found that the requirement of permission to request a foreign service to render assistance has not been embodied in the law or an internal rule of GISS. The Committee considers it advisable that the requirement of permission for

making requests for assistance to foreign services be laid down expressly and recommends GISS to ensure that this is done. The requirement can be linked to the permission which is normally required for exercising the power to which the request relates. (section 8.3)

- 14.21. The Committee has established that a number of requests for assistance involving the exercise of special powers made to foreign services of which it is doubtful whether they satisfy the prescribed criteria for cooperation did not satisfy the requirements of necessity, proportionality and/or subsidiarity. In three cases the request for assistance made to the foreign service could have such harmful consequences for the person(s) concerned as to be disproportionate to the intended purpose of GISS. In two of these cases, moreover, it would have been sufficient for GISS to use a means less injurious to the person(s) concerned, for example not requesting the assistance of the foreign service but performing activities itself. It is the opinion of the Committee that GISS should not have requested the assistance of the foreign services of which it was doubtful whether they satisfied the prescribed criteria for cooperation. The Committee has established that some requests for assistance from GISS to foreign services are worded in a way that leaves the foreign service much scope for deciding how to act in meeting the request. The Committee also noticed that GISS does not always stipulate additional guarantees from the foreign services in question that may limit the potential detriment to the person(s) concerned. From a due care perspective the Committee believes that it would be better for GISS to make its requests for assistance to foreign services as explicit as possible and where possible state the limits of the requested assistance. The Committee recommends that GISS, prior to asking a foreign service for assistance involving the exercise of special powers, make a thorough assessment of the necessity, proportionality and subsidiarity of the request to be made and record the assessment in writing. The Committee thinks it advisable that the obligation to state reasons in writing be expressly included in the permission procedure for requests to foreign services recommended by the Committee. (section 8.3)
- 14.22. It has not emerged from the Committee's investigation that GISS, when carrying out joint operations with counterparts, failed to satisfy the conditions imposed on such operations by law and legislative history. (section 9.2)
- 14.23. It is the opinion of the Committee, when GISS cooperates in security screenings with foreign counterparts of which it is questionable whether they satisfy the prescribed criteria, that the protection of the person screened requires that GISS takes precautionary measures (as mentioned above) and applies them strictly. The Committee has established, however, that in actual practice the precautionary measures were not always applied or not applied strictly. The Committee recommends that GISS strictly apply the prescribed precautionary measures aimed at protecting persons involved in a security screening and in all cases expressly include the conditions laid down with respect to foreign services subject to doubts in the written request. (section 10)
- 14.24. The Committee's investigation has shown that GISS also cooperates for security screening purposes with services of which it may be doubted whether they satisfy the prescribed criteria, without the service management having given permission for the cooperation after following through a decision procedure. No precautionary measures have been laid down in a country information file with respect to these

services. The Committee has also established that GISS already was or is cooperating with some services while the decision procedure had or has not been followed through yet. The Committee considers this improper and holds the opinion that GISS must always first follow through the decision procedure before it may start cooperating. The Committee recommends that GISS, before starting to cooperate with a foreign service for security screening purposes, first assess in accordance with the internal decision procedure whether the service qualifies for cooperation and if so, subject to which conditions. (section 10)

- 14.25. The Committee holds that it is in the interest of the persons involved in a security screening that they are expressly informed in all cases that GISS may make inquiries with a foreign counterpart. The Committee recommends that GISS include a passage to this effect in the Personal Information Form which a person concerned must fill out and sign before GISS may start a security screening investigation. (section 10)
- 14.26. The Committee has found that the list in the Manual of GISS of countries with which GISS cooperates for security screening purposes is outdated. The Committee recommends, with a view to due care, that the list of the Manual, which is accessible to GISS employees, be brought into line and kept identical with the list at the Security Screening department. (section 10)
- 14.27. The Committee's investigation has shown that GISS is actively involved with several multilateral fora. (section 11)
- 14.28. In this investigation the Committee has not found any evidence that the cooperation of GISS and DISS with foreign services was insufficiently coordinated or that this led to actual problems. (section 13)

Thus adopted at the meeting of the Committee held on 12 August 2009.