

REVIEW REPORT

On the lawfulness of the performance by GISS of its obligation to notify

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REVIEW COMMITTEE
FOR THE
INTELLIGENCE AND SECURITY SERVICES

CTIVD no. 24

SUMMARY

Of the review report on the lawfulness
of the performance by GISS of its obligation to notify

When the General Intelligence and Security Service (GISS) exercises certain special powers that are listed exhaustively in the Intelligence and Security Services Act 2002 (further referred to as the ISS Act 2002), this creates an obligation to notify, so Article 34 of the Act provides. Special powers that are subject to the obligation to notify are, for example, telephone tapping and forced entry into a home. The obligation to notify means that five years after a special power has been exercised GISS must examine whether a report of the exercise of the special power can be submitted to the person with regard to whom the power was exercised. The purpose of the obligation to notify is to (better) enable individuals to effectuate their fundamental rights.

It is not possible in all cases to notify the person concerned. The obligation to notify may lapse, be suspended or be cancelled. The examination preceding notification may lead to the conclusion that the person concerned cannot be traced or has died. In these cases the obligation to notify lapses. If the notification examination shows that the special power is relevant to the current information level of GISS, the obligation to notify will be suspended until the relevance has ceased. Furthermore, the notification examination may lead to the conclusion that the obligation to notify must be (permanently) cancelled if – briefly stated – notification can reasonably be expected to result in a source of GISS being disclosed, in relations with other countries being seriously damaged, or in a specific use of a GISS method being disclosed. These are the grounds for cancellation.

In forty-three per cent of the cases the notification examination resulted in the conclusion that the person concerned could not be traced. Twenty-five per cent of the notification decisions were decisions to suspend the obligation to notify and in twenty-seven per cent it was decided that a ground for cancellation applied. In the remaining five per cent of the cases the person concerned had died, or a special power had been used in regard of an organisation, or the special power was not exercised after all even though permission to do so had been obtained.

Although no person has been notified so far, the Committee has established that as a rule GISS performed its obligation to notify in conformity with the statutory requirements. In the course of its investigation the Committee encountered a number of exceptional cases. The Committee has established that in one case GISS did not act in conformity with the statutory requirements when tracing the person concerned. It is the opinion of the Committee that in one case GISS wrongfully decided to suspend the obligation to notify. In addition, it is the opinion of the Committee that in two cases GISS wrongfully decided to invoke source protection as a ground for cancellation. The Committee recommends that GISS reconsider

these notification decisions. This does not mean to say, however, that reconsideration would result in notification, because there may be other grounds for deciding not to notify.

The Committee further holds the opinion that there are two points on which the policy adopted by GISS is too narrow. When tracing persons concerned, GISS confines its efforts to an administrative check of its own information system and of the municipal personal records database, in the sense that GISS checks its own information systems to collect identity data in order to be able to do a successful search in the municipal personal records database. It is the opinion of the Committee that GISS' own information systems can also play an independent role and should not be used only as a supplement to the municipal personal records database. It is the opinion of the Committee that GISS may be expected to enquire from the local Regional Intelligence Service or another relevant body within the meaning of section 60 of the ISS Act 2002 whether they happen to have information of their own about the actual abode of a person concerned if the file available to GISS contains indications that such an enquiry may lead to some result. The Committee recommends that GISS adjust its tracing policy on this point. The Committee has no indication that in the cases it investigated the persons concerned could in fact have been traced if GISS had done such a further search, but cannot exclude it, either.

The Committee has established that GISS gives a broad interpretation to the notion of 'ongoing investigation', linking it to threats emanating from certain phenomena in society. The Committee recommends linking the notion as much as possible to actual investigations rather than to societal phenomena. The Committee has established, though, that in practice GISS does indeed seek a link with actual investigations and decided on good grounds to suspend notification, with the exception of the one case mentioned above.

See section 5 of the review report for a detailed overview of the conclusions and recommendations of the Committee.

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1 Introduction

1.1 The obligation to notify

When the General Intelligence and Security Service (GISS) exercises certain special powers that are listed exhaustively in the Intelligence and Security Services Act 2002 (further referred to as the ISS Act 2002), this creates an obligation to notify, so Article 34 of the Act provides.¹ Examples of special powers subject to the obligation to notify are telephone tapping and forcing entry into a home. The obligation to notify means that five years after a special power has been exercised GISS must examine whether it is possible to inform the person with regard to whom the power was exercised. The purpose of the obligation to notify is to (better) enable individuals to effectuate their fundamental rights. It is not possible in all cases to notify the person concerned. The obligation to notify may lapse, be suspended or cancelled. The examination preceding notification may lead to the conclusion that the person concerned cannot be traced or has died. In these cases the obligation to notify lapses. If the notification examination shows that the special power is relevant to the current information level of GISS, the obligation to notify will be suspended until the information is no longer relevant. In addition, the notification examination may lead to the conclusion that the obligation to notify must be (permanently) cancelled if – briefly stated – notification can reasonably be expected to result in a source of GISS being disclosed, in relations with other countries being seriously damaged, or in a specific use of a GISS method being disclosed.

The *de facto* effective date of the obligation to notify was 29 May 2007, five years after the ISS Act 2002 entered into effect. A letter dated 4 December 2008 regarding an evaluation of the obligation to notify sent by the minister of Internal Affairs and Kingdom Relations (further referred to as: the minister) to the Second Chamber states that there should be no taboo about debating the benefits and necessity of the obligation to notify.² The minister thought it too early, however, to conduct the debate at the time. The minister stated that the findings of the Review Committee for the Intelligence and Security Services (further to be called: the Committee) would have to be “included in this discussion”. The Committee has found that the Second Chamber is amazed that nobody has been notified so far.³ With the present review report the Committee aims at providing a clear overview of the parameters and the performance of the obligation to notify. In this context it points out that in conformity with the powers assigned by the legislator to the Committee, the present report deals only with the question whether the obligation to notify has been performed lawfully by GISS. Efficiency considerations are not discussed in this review report.

¹ The ISS Act 2002 uses the term ‘submitting a report’. In the legislative history of the Act, however, the term notify is used consistently. This review report will mostly follow the terminology of legislative history..

² *Parliamentary Papers II* 2008/09, 30 977, no. 18, p. 7.

³ See e.g.: *Parliamentary Papers II* 2008/09, 30 977 and 29 924, no. 22, pp. 6, 8 and 11.

1.2 *The Committee's investigation*

Pursuant to its review task under Article 64 of the ISS Act 2002, the Committee investigated whether GISS performed its obligation to notify lawfully. Pursuant to Article 78(3) of the 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 its intention to conduct this investigation on 23 April 2009. In the course of its investigation the Committee examined the notification decisions - together with the underlying files - that were taken in the period from 29 May 2007 to 11 November 2009, inspected the documents pertaining to the obligation to notify (establishing the parameters) and interviewed various employees of GISS involved in performing the obligation to notify.

One element of the Committee's review task is to monitor whether GISS performed its obligation to notify lawfully. The Committee has been monitoring how the obligation to notify is being performed since the *de facto* entry into force of this obligation. For the purposes of better enabling the Committee to perform this review task, Article 34(2) of the ISS Act 2002 provides that the Committee must be informed if it is not possible to submit a report to the person concerned. The notice to the Committee must state the reasons why the report cannot be submitted.

While it is true that the existence of a ground for suspension does not make notification permanently impossible, the ISS Act 2002 does not preclude the possibility of the Committee being informed in those cases, too. With a view to the Committee's monitoring task the Committee considered it advisable that it should also be actively and periodically informed of the cases in which a ground for suspension applied. By now, GISS is indeed putting this principle into practice.⁴ It is the opinion of the Committee that this does justice to the legislator's intention of reinforcing the monitoring task of the Committee.⁵

Section 2 discusses the theoretical framework underlying the obligation to notify. Section 3 contains the findings of the Committee. The Committee's concluding observations are laid down in section 4. Section 5 presents the conclusions and recommendations of the Committee.

This review report includes a classified appendix.

1.3 *Background of the development of the notification rules*

Initially, the obligation to notify the exercise of certain special powers was not included in the legislative proposal for a new law regulating the intelligence and security services (eventually enacted as the ISS Act 2002). The obligation to notify was expressly linked to the obligation to notify arising from Articles 12 and 13 of the Constitution.⁶ In the period when the ISS Act 2002 was being drafted, a proposed amendment to Article 13 of the Constitution was pending, which provided that violations of the secrecy of the mail and communications would create an obligation to notify. Article 12 of the Constitution already provided for an obligation to notify of entry into a house against the will of the occupant. The legislator took the position that an obligation to notify already ensued from the provisions of Article 12 and (the new) Article 13 of the Constitution by themselves, and not from any provision of the

⁴ *Parliamentary Papers II* 2008/09, 30 977, no. 18, p. 2.

⁵ *Parliamentary Papers II* 2000/01, 25 877, no. 18.

⁶ See for example: *Parliamentary papers II* 2000/01, 25 877, no. 59, p. 13.

ECHR. The idea was therefore to link the obligation to notify in the ISS Act 2002 to the entry into force of the pending amended Article 13 of the Constitution. This would mean that the details of the obligation to notify in the new law on the intelligence and security services would not be elaborated until after the amended Article 13 of the Constitution had entered into force. During the legislative process for the new law on the intelligence and security services, however, it was decided, on the insistence of several political groups in parliament, to have the obligation to notify enter into force simultaneously with the original bill.⁷

2 Theoretical framework

2.1 *The obligation to notify in relation to the European Convention on Human Rights*

In the legislative history of the ISS Act 2002 there are several instances where the government observes that an obligation to notify cannot be derived from the European Convention on Human Rights (ECHR).⁸ The 1978 judgment *Klass v. Germany* of the European Court for Human Rights (ECtHR) is cited in substantiation of this position.⁹ In this judgment the ECtHR examined among other things what is the relation between the obligation to notify and Articles 8 and 13 of the ECHR. Initially, the Council of State, in its opinion on the original legislative proposal for what was to become the ISS Act 2002, explicitly took the position that an obligation to notify could in fact be derived from *Klass v. Germany*.¹⁰ In its opinion on the amended bill, which did include an obligation to notify, the Council of State merely stated that Article 12 of the Constitution in any case imposed an obligation to notify of the forced entry into homes and did not further discuss the case law of the ECtHR in this context.¹¹

The issue under consideration in the judgment was the German system of active notification. German law imposes an obligation of active notification. In the German system the obligation to notify lapses, however, if notification is incompatible with the interests of national security. The ECtHR ruled that this did not constitute a violation of Article 8 read with Article 13 ECHR. But the ECtHR emphatically placed the right to being actively notified within the framework of the complex of adequate and effective safeguards from violations of an individual's fundamental rights. The obligation to notify can contribute to such safeguards.

The nature of the *Klass* judgment is, however, casuistic and the ECtHR only examined the question whether, in the circumstances of the actual case, an existing obligation to notify might be restricted because of national security interests. The judgment therefore does not deal with the situation that the national law does not provide at all for an obligation of (active) notification. But the ECtHR did make the following observation regarding the possibility for individuals to subject the legality of the exercise of certain special powers to review a posteriori:

“As regards review a posteriori, it is necessary to determine whether judicial control, in particular with the individual's participation, should continue to be excluded even after

⁷ *Parliamentary papers II* 1998/99, 25 877 and 26 158, no. 6, p. 1.

⁸ See e.g.: *Parliamentary papers II* 1999/00, 25 877, no. 9, p. 29 and *Parliamentary papers II* 2000/01, 25 877, no. 14, p. 52.

⁹ ECtHR 6 September 1978, no. 5029/71 (*Klass v. Germany*).

¹⁰ *Parliamentary papers II* 1997/98, 25 877, no. A, p. 2-3.

¹¹ *Parliamentary papers II* 1997/98, 25 877, no. A, p. 7.

surveillance has ceased. Inextricably linked to this issue is the question of subsequent notification, since there is little scope for recourse to the courts by the individual concerned unless he is advised of the measures taken without his knowledge and thus able retrospectively to challenge their legality.”¹²

The ECtHR goes on to say that notification is not possible in all cases. Notification may not jeopardise the long-term objectives of the investigation that were the reason for exercising a special power. Neither may notification jeopardise the lawful interests of the intelligence service, such as keeping secret sources, methods and current level of information. The above is known as the *jeopardise* criterion.¹³ The ECtHR then states that active notification is obligatory:

“[...] as soon as notification can be made without jeopardising the purpose of the restriction.”

In a more recent judgment concerning the obligation to notify (*Association for European Integration and Human rights and Ekimdzhiev v. Bulgaria*) the ECtHR scrutinizes the Bulgarian legal system, which does not have any obligation to notify at all.¹⁴ The ECtHR takes the following grounds.

“Finally, the Court notes that under Bulgarian law the persons subjected to secret surveillance are not notified of this fact at any point in time and under any circumstances. According to the Court's case-law, the fact that persons concerned by such measures are not apprised of them while the surveillance is in progress or even after it has ceased cannot by itself warrant the conclusion that the interference was not justified under the terms of paragraph 2 of Article 8, as it is the very unawareness of the surveillance which ensures its efficacy. However, as soon as notification can be made without jeopardising the purpose of the surveillance after its termination, information should be provided to the persons concerned. By contrast, the SSMA does not provide for notification of persons subjected to surreptitious monitoring under any circumstances and at any point in time. On the contrary, section 33 of the SSMA, as construed by the Supreme Administrative Court, [CTIVD: *The relevant Bulgarian legislation*] expressly prohibits the disclosure of information whether a person has been subjected to surveillance, or even whether warrants have been issued for this purpose. Indeed, such information is considered classified [...]. The result of this is that unless they are subsequently prosecuted on the basis of the material gathered through covert surveillance, or unless there has been a leak of information, the persons concerned cannot learn whether they have ever been monitored and are accordingly unable to seek redress for unlawful interferences with their Article 8 rights. Bulgarian law thus eschews an important safeguard against the improper use of special means of surveillance.”¹⁵

In this judgment the ECtHR further takes the ground that in that case, in the given circumstances of the relevant (Bulgarian) law, the fact that there will be no notification constitutes violation of Article 13 ECHR:

“It thus appears, that, unless criminal proceedings have subsequently been instituted or unless there has been a leak of information, a person is never and under no circumstances apprised of the fact that his or her communications have been monitored. The result of this

¹² ECtHR 6 September 1978, no. 5029/71, §57 (*Klass. v. Germany*). The ECtHR again confirmed this position in ECtHR 29 June 2006, no. 54934/00, §135 (*Weber and Saravia v. Germany*).

¹³ See for example: *Parliamentary papers II* 1999/2000, 25 877, no. 8, p. 86 and *Parliamentary papers II* 2000/01, 25 877, no. 14, p. 53.

¹⁴ ECtHR 28 June 2007, no. 62540/00, §90 (*Association for European Integration and Human rights and Ekimdzhiev v. Bulgaria*).

¹⁵ *Association for European Integration and Human rights and Ekimdzhiev v. Bulgaria*, §90-91.

lack of information is that those concerned are unable to seek any redress in respect of the use of secret surveillance measures against them. Moreover, the Government have not provided any information on remedies – such as an application for a declaratory judgment or an action for damages – which could become available to the persons concerned if they find out about any measures against them [...]. In *Klass and Others* the existence of such remedies was not open to doubt.”¹⁶

One cannot simply draw general conclusions from this case law of the ECtHR. These ECtHR judgments are strongly tailored to the actual circumstances of the case. The ECtHR does not prescribe an established system of legal protection but merely requires that the complex of safeguards be adequate and effective. The ECtHR considers notification to be one of the means that may contribute to this complex of actual and effective safeguards. With regard to the Dutch system it is therefore relevant to examine the structure of the complex of safeguards. It is a fact, however, that none of the other safeguards provide for an active obligation to inform an individual that special powers have been exercised in regard to him.¹⁷ In *Association for European Integration and Human rights and Ekimdzhiev v. Bulgaria* the ECtHR states expressly that it considers notification to be an important safeguard against abuse of special powers. It follows from the legislative history that the obligation to notify serves the purpose of informing an individual that special powers have been exercised in regard to him in order to enable him thus to expose allegedly unlawful acts by the services.¹⁸ But the Committee can only infer from the case law of the ECtHR that it attaches value to a system of active notification and that it gives active notification its place within the complex of legal safeguards. In the opinion of the Committee, however, the obligation to notify cannot be considered an obligation ensuing automatically from the ECHR.

2.2 *The obligation to examine whether notification is possible*

2.2.1 Link to certain special powers

As was already briefly mentioned above, the obligation to notify is linked to the exercise of a number of special powers that are listed exhaustively in Article 34(1) of the ISS Act 2002. These are the power to open letters and other addressed consignments pursuant to Article 23(1) of the ISS Act 2002, the power to use a technical device for tapping, receiving, recording and intercepting any form of conversation, telecommunication or data transfer by means of an automated work, irrespective of where this takes place (for example telephone or e-mail tapping) pursuant to Article 25(1) of the ISS Act 2002, the power to select non-specific non-cable-bound telecommunication on the basis of identity or any technical characteristic (for example intercepting and listening in to satellite communications) pursuant to Article 27(3)(a) and (b), and the power to enter a home without the consent of the occupant pursuant to Article 30(1) of the ISS Act 2002. It follows from the above that the exercise of special powers not included in Article 34(1) of the ISS Act 2002 is not subject to the obligation to notify.¹⁹ The obligation to notify comes into existence by the actual exercise of a special power regardless of whether the exercise has yielded any data.

¹⁶ *Association for European Integration and Human rights and Ekimdzhiev v. Bulgaria*, §101.

¹⁷ What is meant here is legal protection by way of the courts, the Review Committee for the Intelligence and Security Services, the Parliamentary Committee for the Intelligence and Security Services, the complaints procedure before the National Ombudsman and the regulations concerning applications for inspection of files including review of these remedies by the courts and the Committee.

¹⁸ *Parliamentary papers I 2001/02*, 25 877, no. 58a, p. 17.

¹⁹ Examples are access to places not being homes (businesses) pursuant to Article 30(1) of the ISS ACT 2002, surveillance and shadowing persons pursuant to Article 20(1) ISS ACT 2002, infiltration of organisations by an

2.2.2 Possible results of the examination whether notification is possible

Five years after a special power has been exercised the relevant minister is required to examine whether the person concerned can be notified of this fact. Pursuant to Article 4.1 read with Article 4.11 of the Decree of 2008 of the Ministry of the Interior and Kingdom Relations concerning mandates (further referred to as the Ministerial Mandate Decree 2008) the minister's obligation to examine whether notification is possible is mandated to the (substitute) head of GISS.²⁰ This examination can have four possible results. First of all an examination pursuant to Article 34(5) of the ISS Act 2002 may have the result that there will be no notification because notification is not reasonably possible. It follows from the legislative history that this is the case if the person concerned cannot be traced or has died (the obligation to notify lapses).²¹ In the second place it is possible that notification must definitely never take place on the basis of one of the grounds for cancellation mentioned in Article 34(7) of the ISS Act 2002 (the obligation to notify is cancelled). If any of these grounds for cancellation applies, this causes the obligation to notify to lapse. A third possible result is that the examination shows that notification would disclose the current level of information of the service as provided in Article 34(6) read with Article 53(1) of the ISS Act 2002 (the obligation to notify is suspended). In this case notification will be suspended for a period of one year each time. The obligation to examine whether notification is possible will revive annually as long as the minister holds the opinion that notification is not yet possible in view of the provision of Article 34(6) of the ISS Act 2002. Finally, the result may be that there are no statutory impediments to performing the obligation to notify and that the service must therefore proceed to send notification to the person concerned.

The Committee has found that it is not possible to deduce a prescribed order of examination from the ISS Act 2002 or from its legislative history. Moreover, GISS is not required to examine all possible grounds for not notifying. If, for example, the person concerned cannot be traced, GISS need not examine whether a ground for cancellation of the obligation to notify applies as well.

2.2.3 Reasonable term

If notification is possible, it should be effected as soon as possible. In the opinion of the Committee this means that the examination preceding the actual performance of the obligation to notify must also be carried out fairly expeditiously. It is the opinion of the Committee that GISS must have completed the entire procedure from the moment when the obligation to examine whether notification is possible arises until the eventual issue of the notification report to the person concerned within a reasonable period. It depends on the specific circumstances of the case what may be considered a reasonable term.

2.2.4 The person to be notified

One of the most elementary questions that must be answered is the question who is to be notified. With regard to this question the law says that the obligation to notify exists with

agent of GISS pursuant to Article 21(1)(a) of the ISS ACT 2002 and requesting traffic data pursuant to Article 28(1) of the ISS ACT 2002.

²⁰ Decree of 2 February 2009, Government Gazette 2009, 20.

²¹ *Parliamentary papers II* 2000/01, 25 877, no. 14, p. 55.

respect to persons in regard to whom one of the special powers enumerated in Article 34(1) of the ISS Act 2002 has been exercised. The Committee distinguishes four categories.

In the first place there are special powers exercised in regard to persons who, because of the goals they are pursuing or because of their activities, give cause for a serious suspicion that they pose a threat to the democratic legal system or to the security or other vital interests of the state (Article 6(2)(a) read with Article 13(1) of the ISS Act 2002). These persons are called *targets*. The exercise of a special power by virtue of Article 34(1) of the ISS Act 2002 in regard to a target is subject to the obligation to notify.

The service may also exercise a special power in regard to a person who cannot be considered a target but in whose case the exercise of the special power may result in a considerable improvement of the information level regarding a target. An example is the situation where a target is very security-minded and information on the target can only be obtained through a person in the target's environment. In this exceptional case the law permits the service to exercise special powers in regard to a *non-target*, as they are called.²² It is the opinion of the Committee that the obligation to notify is fully applicable in regard to such a non-target as well, since this case, too, concerns the purposeful invasion of privacy. And the purpose of the obligation to notify is to protect the rights of persons whose privacy is invaded.

On the basis of the service's intelligence task abroad, moreover, special powers are also exercised in regard to persons concerning whom data must be processed as part of an investigation regarding other countries (Article 6(1)(d) read with Article 13(1)(c) of the ISS Act 2002.²³ Whenever there is a purposeful invasion of privacy, the obligation to notify applies in regard to those persons as well.

A distinction must be made between the above and cases involving third parties. A third party is any person who cannot be put in either the category of targets or the category of non-targets. This may, for example, be any person with whom the person in regard to whom the special power is exercised, communicates. Another example is a person making sporadic use of the telephone of the person whose telephone is being tapped. Like GISS, the Committee holds the opinion that there is no obligation to notify third parties, since there is no purposeful invasion of their privacy. This issue was explicitly raised and discussed in the legislative history of the ISS Act 2002.²⁴

2.2.5 Exercise of a special power in regard to an organisation

The above centred on the exercise of a special power in regard to a natural person. It is also possible, however, for special powers to be exercised in regard to an organisation. But the law only imposes an obligation to notify natural persons. Nonetheless, the exercise of a special power in regard to an organisation frequently involves the invasion of the private life of natural persons as well. It is relevant to examine in which cases the exercise of special powers in regard to an organisation may give cause to notify a natural person.

²² Article 6(2)(a) ISS Act 2002 reads "conducting investigations regarding organisations and persons [...]". In this context, however, Article 13(1)(e) of the ISS Act 2002 requires that the data to be processed "[...] is necessary to support the proper performance by the service of its statutory tasks".

²³ These persons are not called targets because the investigation is not primarily aimed at them but at the activities of the countries mentioned in the foreign intelligence task designation order.

²⁴ *Parliamentary papers I* 2001/02, 25 877, no. 58a, p. 22-23.

When assessing this matter, GISS will consider two factors. The first regards the nature of the information the service wishes to gather. A relevant aspect is whether it concerns the organisation as a whole, or specific members of the organisation as well. The second factor regards the domain within which the power is exercised. For this purpose it must be examined whether the power is aimed primarily at communications within the scope of work or at communications within the scope of an individual member's private life. It is the opinion of GISS that a person only qualifies for notification if the investigation is wholly or partly aimed at an individual member of the organisation or if the communications take place within the scope of this member's private life.

The Committee points out that the case law of the ECtHR shows that a person's work environment may also fall within his private life within the meaning of Article 8 ECHR.²⁵ In the opinion of the Committee a person should therefore qualify for notification if special powers have been exercised in regard to him in the context of an investigation which, though primarily targeting an organisation, also aimed at gathering information originating from this person. In this case the question whether tapped communications took place in the context of work or of the person's private life does not play a significant role.

2.2.6 Submitting a notification report

If it follows from the examination that a report can be submitted, this should be done as soon as possible. Article 34(3) of the ISS Act 2002 contains a limitative list of what the report must contain. It also follows from this paragraph that the report must be in writing. It is a concise report. It only states the identity of the person concerned, the special power that was exercised, the person or body who ordered the exercise of the power including the date of the order and the period during which the special power was exercised (Article 34(3), (a) through (e), of the ISS Act 2002).

The person concerned is not informed of the investigation in the context of which the special power was exercised nor of the reasons for exercising the special power. If the person concerned wishes to try and place the special power in a specific context, he may, pursuant to Article 47(1) of the ISS Act 2002, request GISS to allow him to inspect the personal data relating to his person that are in the possession of the service.

2.3 *Lapsing of the obligation to notify*

2.3.1 Possibility of tracing the person concerned

Pursuant to Article 34(5) of the ISS Act 2002 the obligation to submit a report (i.e. the obligation to notify) lapses at the moment when it has been established that it is not reasonably possible to do so. Notifying the person concerned is not reasonably possible if this person cannot be traced or has died.²⁶ In order to be able to perform the obligation to notify, GISS must reasonably be able to trace the place of abode of the person concerned. When the person concerned dies, the obligation to notify applying in regard to him does not devolve on a surviving dependant.

2.3.2 Reasonable effort

²⁵ See e.g.: ECtHR 25 October 2007, no. 38258/03, §48 (*Vondel v. The Netherlands*).

²⁶ *Parliamentary papers II* 2000/01, 25 877, no. 14, p. 55.

Legislative history shows that GISS may be expected to make a reasonable effort in its attempts to trace the person concerned.²⁷ It is the opinion of the Committee that a reasonable effort comprises in any case checking GISS' own information systems and searching the municipal personal records database.²⁸ The fact that a person concerned is meanwhile no longer in the Netherlands will as a rule result in the person concerned no longer being traceable by reasonable effort, since it would go too far to approach foreign authorities for the purposes of an extensive search. If, however, the place of abode abroad of the person concerned can be traced by simple means, this person must be notified.²⁹ This may be the case, for example, for a person living abroad whose place of abode is generally known.

The Committee has established that GISS, when tracing a person concerned, usually confines its efforts to searching its own information systems and the municipal personal records database, in the sense that GISS' search of its own information systems serves to collect identity data in order to enable GISS to do a successful search in the municipal personal records database. It is the opinion of the Committee that GISS' own information systems can also play an independent role and should not be used only as a supplement to the municipal personal records database. Legislative history shows that if this search does not yield results, the obligation to notify lapses only if the person concerned also cannot be traced otherwise with a reasonable effort.³⁰ It is the opinion of the Committee that GISS may be expected to enquire of the local Regional Intelligence Service (*RID*) or another relevant body within the meaning of section 60 of the ISS Act 2002 whether they happen to have information of their own about the actual abode of a person concerned, if the file available to GISS contains indications that such an enquiry may lead to a result.³¹ Upon the entry into force of the post-Madrid measures, so the Committee holds, these efforts will include consulting the Immigration and Naturalisation Service (*IND*) of the Ministry of Justice.³² There is close cooperation in particular with the *RID* and by virtue of Article 60 of the ISS Act 2002 intelligence information at the disposal of the *RID* forms part of GISS' own systems.³³ Information at the disposal of the *RID* in the context of its public order task can also contain data that are relevant to the traceability of a person concerned. Mention of the actual abode in the file on the person concerned, for example in a subsequent official report, may be an indication that it may be useful to do a check at the *RID*.

GISS holds the opinion that consulting other databases than the municipal personal records database has no added value. If such a database yields an indication of the abode of the person concerned, this will still not give absolute certainty. GISS has pointed out that the integrity of such databases is not an established fact.

The Committee has established, however, that the processing of data in the municipal personal records database is likewise dependent on the information provided by individuals

²⁷ *Parliamentary papers II* 1999/2000, 25 877, no. 8, p. 92.

²⁸ Pursuant to the Municipal Database (Personal Records) Act, GISS has direct access to the municipal personal records database.

²⁹ *Parliamentary papers II* 1999/2000, 25 877, no. 8, p. 92.

³⁰ *Parliamentary papers II* 2000/01, 25 877, no. 14, p. 55.

³¹ Sources within the meaning of Article 60 of the ISS Act 2002 are the chief officer of a police force, the commander of the Royal Military Constabulary and the director-general of the tax and customs administration of the ministry of Finance.

³² The post-Madrid measures include a proposal also to bring the chief director of the Immigration and Naturalisation Service (*IND*) within the scope of operation of Article 60(1) of the ISS Act 2002. See: *Parliamentary papers II* 2005/06, 30 553, no. 2, p. 9 and 32.

³³ See on this subject CTIVD Review Report no. 16 on the investigation of the cooperation between GISS and the Regional Intelligence Services and the Royal Military Constabulary, respectively, *Parliamentary papers II* 2008/09, 29 924, no. 22 (appendix), available [in Dutch] at www.ctivd.nl.

about their place of abode. It cannot be excluded that an individual does not really live at the address stated in the municipal personal records database. In this respect the Committee finds that it is also not possible to obtain absolute certainty about the abode of the person concerned by checking the municipal personal records database. It is the opinion of the Committee that sending the notification by registered mail constitutes sufficient safeguard against issuing the notification letter to the wrong person.

The Committee and GISS have discussed this issue, but so far GISS has not adopted the recommendation of the Committee. In response to the Committee's recommendation, however, GISS tried, in random cases, to trace a number of persons by checking the police registers. This did not yield useful results that could lead to a person concerned being traced. If a result was obtained, so GISS said, it had to be checked again against the municipal personal records database in order to obtain certainty about the person's abode. The same applied with regard to checking data available at the Tax and Customs Administration, the social insurance bank *SVB* and the Government Road Transport Agency *RDW*. The lack of any concrete results confirmed GISS in its conviction that consulting these registers is neither advisable nor useful.

The Committee points out, however, that this was merely an isolated test involving only a small number of cases. It is the opinion of the Committee that it is scarcely possible to draw general conclusions about the usefulness of such searches from this test. It is quite possible that in some cases searching police registers in particular can indeed lead to some result, for example if the actual abode of the person concerned is mentioned in a statement made to the police.

The Committee further stated that agencies within the meaning of Article 60 of the ISS Act 2002 should only be consulted if there are *indications* that this will be of some use. This principle was not included in the random test done by GISS. The Committee therefore maintains its recommendation to adjust the tracing policy on this point.

However, as will be described below in section 3.3, the Committee has found no indication that in the cases it investigated the persons concerned could have been traced if GISS had made this further search, but cannot exclude it either.

2.4 *Suspension of the obligation to notify*

2.4.1 Protection of current level of information

Article 34(6) of the ISS Act 2002 provides that the obligation to notify is suspended if submitting a notification report would disclose the current level of information of the service.³⁴ In determining when it is appropriate to postpone notification, the legislator has sought a link with the ground for suspension laid down in Article 53(1) of the ISS Act 2002 which applies in the context of the rules pertaining to applications for inspection of files.³⁵ Article 53(1) of the ISS Act 2002 provides as follows.

"1. An application as referred to in Article 47 will in any case be refused if:

a. data relating to the person making the application has been processed for the purposes of any investigation, unless:

1°. the data was processed more than five years ago,

³⁴ *Parliamentary papers II* 2000/01, 25 877, no. 58, p. 38.

³⁵ These are applications within the meaning of Article 46 of the ISS Act 2002.

- 2°. since then, no new data relating to the person making the application has been processed for the purposes of the investigation for the purposes of which the original data was processed, and
 - 3°. the data is not relevant to any ongoing investigation;
- b. no data relating to the person making the application has been processed.”

If an application for inspection of files must be refused pursuant to Article 53(1) of the ISS Act 2002, the obligation to submit a notification report will be suspended, too. Where the point is to prevent disclosing the current level of information, it is irrelevant whether this happens on GISS' own initiative or in response to an application for disclosure from the person concerned. Moreover, notification may in practice lead to an application for inspection of files. The legislative history shows that it would be inconsistent if the two sets of rules would not use the same assessment framework as regards the term.³⁶

Article 34(6) of the ISS Act 2002 should be read together with paragraph (1) of the same Article. If a ground for suspension exists, this ground for suspension applies for one year at a time. After the expiry of one year, GISS must again examine whether the ground for suspension is still valid. Suspension emphatically cannot lead to cancellation.³⁷ Each time it is examined on an annual basis whether the case still involves current data. This annual examination continues until it is possible to notify.

2.4.2 Link with Article 53(1) of the ISS Act 2002

In assessing whether a ground for suspension applies, two scenarios can be recognized. On the one hand it is possible that since the exercise of the special power to be notified, new data relating to the person concerned has been processed in connection with the investigation for the purposes of which the special power was exercised (Article 53(1)(a)(2) of the ISS Act 2002). In this case it can be said that the person concerned is currently still under surveillance. On the other hand it is possible that the data in question is still relevant to an ongoing investigation (Article 53(1)(a), at 3, of the ISS Act 2002). If for example the results of a certain telephone tap are still relevant to an ongoing investigation, this level of information should not be revealed by submitting a report on the exercise of the telephone tapping power in question.

The ground for suspension specifically focusing on the fact that the person concerned is currently still under surveillance will not easily give rise to discussion. If the person concerned is still drawing the attention of GISS in connection with the relevant investigation, notifying this person may lead to a deterioration of the possibility to collect data on this person.

2.4.3 Ongoing investigation

The provision of Article 53(1)(a), at 3, is open to several interpretations, with the term 'ongoing investigation' in particular giving rise to discussion. The Committee has established that GISS rightly proceeds on the basis of the principle that it must always be determined on a case by case basis whether there still is an ongoing investigation.

It is important, however, to state how broadly this term may be interpreted. The Committee has found that GISS uses a fairly broad definition of the term 'ongoing investigation'. An

³⁶ *Parliamentary papers II* 1999/2000, 25 877, no. 8, p. 90.

³⁷ *Parliamentary papers II* 2000/01, 25 877, no. 14, p. 58.

internal policy document of GISS shows that with respect to the a-task (within the meaning of Article 6(2)(a) of the ISS Act 2002) the term ongoing investigation is understood to mean “the complex of activities of a service aimed at making visible the threat posed by phenomena in society to one or more of the vital interests of the state as mentioned in the law”. In connection with the d-task (within the meaning of Article 6(2)(d) of the ISS Act 2002), an ongoing investigation is understood to mean “the complex of activities performed on the grounds of a designation within the meaning of the designation order of the prime minister, in which he designates the matters to be investigated by GISS pursuant to Article 6(2)(d) of the ISS Act 2002.”

The Committee particularly draws attention to the broad interpretation given to the term ‘ongoing investigation’ in connection with the a-task. GISS has chosen to link this to the threat posed by certain phenomena in society. Examples of such phenomena are ‘islamic terrorism’, ‘radicalisation’ and ‘violent political activism’. This policy may have the result that as long as islamic terrorism is being investigated, it will not be possible to notify the persons in regard to whom a special power has been exercised for the purposes of this investigation. For instance, a person operating on his own (sometimes called a “self igniter”) and an international jihad network may both be investigated for the purposes of investigating islamic terrorism without there being any connection between the two. The link with such a wide field of investigation may have the result that there will be no notification as long as the other (sub)investigation is still ongoing. It is not to be expected, moreover, that any of the aforementioned phenomena will cease to be an area of responsibility for GISS. The ground for suspension may thus come to acquire a permanent nature, which the Committee considers to be not in accordance with the intention of the legislator, nor with the requirement of relevance laid down in Article 53(1)(a), at 3, of the ISS Act 2002. The information in question must be relevant to an ongoing investigation. Such a broad definition of the term investigations does not do justice to the requirement of relevance. The Committee recommends that GISS link the definition to concrete investigations instead of phenomena in society. Ongoing investigation may be defined, for example, as a concrete investigation of a network or an organisation or in some cases even an individual person. This would do greater justice to the wording of Article 53 of the ISS Act 2002 and the intention of the legislator, which aimed at making a clear distinction between suspension and cancellation.

The Committee has established, however, as can also be read in section 3.4, that in practice GISS does in fact make this link with concrete investigations and decided to suspend notification on good grounds, with the exception of one case that is mentioned in that section.

GISS has pointed out the possibility of cross-connections. Cross-connections are more than superficial contacts between different networks, one of which is still being investigated by GISS.

If there are indications of relevant connections between certain networks while one of these networks is still being investigated by GISS, then it is the opinion of the Committee that this may be an impediment to notifying persons belonging to the network that is not or no longer being investigated, since notification must not result in harming the operational position of the service. The fact that these connections have not yet been recognized by GISS in all cases does not mean that the ground for suspension does not apply. However, in such cases GISS will have to state reasons why it holds that the data to be released by notification is relevant to an ongoing investigation. It is GISS that must make a plausible case that in the relevant area of responsibility there is a significant risk of non-recognized connections.

The Committee comments in this context that not every contact between two networks or organisations can without further reasons result in suspension of notification. There must be contact that is relevant in connection with the risk of interfering with any ongoing investigation. It is impossible to give general rules in this matter and all the circumstances of the case must be taken into consideration in assessing this issue.

The Committee endorses the principle applied by GISS that it must be determined on a case by case basis whether the information to be notified is relevant to any ongoing investigation.

The answer to the question whether there is an ongoing investigation does not depend on the exercise of special powers. Monitoring a specific investigation issue by investigating open sources can also mean that there is an ongoing investigation.

2.5 *Cancellation of the obligation to notify*

2.5.1 General observations regarding cancellation

Article 34(7) of the ISS Act 2002 provides for the possibility that the obligation to notify referred to in the first paragraph of this Article will lapse altogether if one of the grounds mentioned in paragraph 7 applies. Pursuant to paragraph 7 the obligation to notify lapses if submitting the report can reasonably be expected to result in sources of a service (including intelligence and security services of other countries) being disclosed, in relations with other countries and international organisations being seriously damaged or in a specific use of a method of a service or the identity of a person who assisted the relevant service in using the method, being disclosed. The foregoing is an elaboration of the jeopardise criterion laid down by the ECtHR that was discussed in section 1.3 above. GISS can only perform its statutory task with a certain measure of secrecy, which effectually means that GISS must be able to keep secret its sources, methods and current level of information.³⁸ Although the term used in the ISS Act 2002 is that the obligation to notify lapses, the term cancellation of notification is also used in this context.³⁹ Before considering the individual grounds for cancellation, the Committee will first discuss the cancellation rules generally.

The aforementioned obligation to examine whether notification is possible refers to the provision of the first paragraph of the Article under consideration. This obligation to examine pertains to the possibility that the ground for suspension embodied in Article 34(6) of the ISS Act 2002 is applicable. If a ground for cancellation applies, the service is not required to examine whether submitting a report is relevant to any ongoing investigation, and the obligation to examine will not revive annually.

Establishing that one of the grounds for cancellation applies is a final decision. The nature of the grounds for cancellation is generally such that they will continue to apply once they have been established to exist. Annual revision, as in the case of the ground for suspension, is therefore not logical. Because of the final nature of the grounds for cancellation GISS will, for reasons of efficiency, examine as early as at the time of exercising the special power whether a ground for cancellation applies; this procedure is supported by the legislative history of the ISS Act 2002.⁴⁰ At the instigation of the Committee this initial establishment of the applicable ground for cancellation when the special power is first being exercised has been converted

³⁸ *Parliamentary papers II* 1999/2000, 25 877, no. 8, p. 86.

³⁹ *Parliamentary papers II* 2008/09, 30 977, no. 18, p. 4.

⁴⁰ *Parliamentary papers II* 1999/2000, 25 877, no. 8, p. 91 and *Parliamentary papers II* 2000/01, 25 877, no. 14, p. 55.

into a provisional establishment, which is examined five years later to see whether the original reason is still valid.⁴¹ In case of doubt this may lead to further investigation of the underlying file. Attention may be drawn in this context to e.g. the provisional invocation of the ground for cancellation “disclosure of a specific method of a service”. The fact that GISS has a specific advanced technique at its disposal may be considered secret at the time when the power is exercised, but five years later the existence of this technique may be a generally known fact. Making this assessment five years later will prevent a ground for cancellation from being established under the influence of passing fads.

The obligation to examine only lapses if submitting a report can reasonably be expected to result in the occurrence of one of the situations mentioned under (a) to (c) of Article 34(7) of the ISS Act 2002. The criterion of reasonable expectation implies on the one hand that it is not required that one of the situations mentioned in the grounds for cancellation will occur. A reasonable expectation that it may occur is sufficient. On the other hand the requirement that the expectation must be reasonable implies in the opinion of the Committee that the expectation must be based on certain facts or empirical rules and must be capable of being objectified. The position that notification can be reasonably expected to result in one of the situations mentioned will therefore have to be based on sound reasons that can be tested by the Committee.

2.5.2 Source protection

It follows from Article 34(7)(a) of the ISS Act 2002 that the obligation to examine lapses if notification can be reasonably expected to result in disclosure of sources of the service, including those of intelligence and security services of other countries. Protecting the service’s sources is one of the basic principles of the ISS Act 2002 and is embodied *inter alia* in the duty of care in regard to its sources that Article 15 of the Act imposes on the service.⁴² It is vital to the effective functioning of the service and to the safety of sources that these sources are assured that their identity will remain secret. Moreover, foreign services will be considerably less willing to provide information to GISS if the origin of the information cannot be kept secret.⁴³

Source protection as a ground for cancellation is interpreted very strictly by the service. A recent letter from the minister of the Interior and Kingdom Relations shows that the service must examine in each individual case whether it is certain that submitting a notification report will not lead to disclosure of the identity of a source.⁴⁴ In case of doubt, it will be decided not to notify. The Committee points out that notifying only if it is certain that there will be no disclosure of any of the service’s sources deviates from the criterion mentioned in the ISS Act 2002. Although the Committee recognizes the great importance of source protection, in practice it is virtually impossible to obtain certainty on this matter. The Committee holds that the resulting stringent restriction of notification is not in keeping with the original intention of the legislator. The criterion of reasonable expectation implies that more is required than the purely theoretical possibility of a source of the service being disclosed. In actual practice, so it will be shown in section 3.5.1 below, this has not led to situations in which the Committee and GISS arrived at different outcomes.

⁴¹ *Parliamentary papers II* 2008/09, 30 977, no. 18, p. 5.

⁴² *Inter alia: Parliamentary papers II* 1997/98, 25 877, no. 3, p. 68; *Parliamentary papers II* 1999/2000, 25 877, no. 8, p. 42.

⁴³ *Parliamentary papers I* 1997/98, 25 442, no. 231b, p. 8.

⁴⁴ *Parliamentary papers II* 2008/09, 30 977, no. 18, p. 5.

Moreover, source protection as a ground for cancellation should not be put forward too easily. It is the opinion of the Committee that this ground for cancellation pertains primarily to the protection of human sources and not to the deployment of a specific technical device (telephone tapping, for example) as a source of the service. The background to source protection lies in particular in the service's duty of care in regard to sources to ensure their safety, and furthermore in a need to prevent a decreasing willingness on the part of sources to provide information to the service.⁴⁵ Such aspects do not play a role in the use of technical sources. In the case of intelligence and security services of other countries, the ground for cancellation applies to sources of these foreign services as well as to information supplied by these services generally. A decreasing willingness to share information may cause the information position of GISS to deteriorate as far as its ability to gather information is concerned and will thus affect national security.

The Committee has established that GISS takes the position that the law does not require a causal connection between the information provided by a source and the power exercised. If at the same time a source of the service is present in the circle of the acquaintances of the person to be notified, the service will very rarely decide to notify regardless of whether the service's source influenced the decision to exercise the special power. Apart from rare exceptions, it is the opinion of the Committee that this is not in conformity with the intention of the legislator. The Committee recommends GISS to practice restraint in this respect. The criterion set by the ISS Act 2002 is the reasonable expectation that a source of the service will be disclosed. In the opinion of the Committee this implies that there must in principle be a plausible relation between the information supplied by the source and the exercise of the special power. The Committee has further found, as follows from section 3.5.1, that in actual cases GISS does in fact use the presence of a causal connection as a guideline.

2.5.3 Causing serious damage to relations with other countries and international organisations

The obligation to examine whether notification is possible lapses if notification can reasonably be expected to result in relations with other countries and international organisations being seriously damaged (Article 34(7)(b) of the ISS Act 2002). This ground for cancellation is based on the principle that notification of the person concerned should not result in deterioration of diplomatic relations of the Netherlands with other countries. This ground for cancellation is likewise given a broad interpretation by GISS and is not restricted to serious damage to diplomatic relations only. GISS takes the position that serious damage may be considered to exist if international contacts will proceed less smoothly or if notification results in decreasing willingness to provide certain information. In addition, the place where the special power is exercised may be relevant, for example if a special power is exercised on the territory of another country.

The Committee here points in particular to the criterion that there must be serious damage. It is the opinion of the Committee that this implies that not every form of contact with another country or an international organisation will have the effect of causing the ground for cancellation to apply. Although the criterion is that there must be *serious* damage, the Committee is aware that this may be readily assumed, since international relationships are delicate by nature; a good relationship comes on foot and goes on horseback. The Committee holds the opinion, however, that here, too, GISS must assess on a case by case basis whether

⁴⁵ *Parliamentary papers II 1997/98*, 25 877, no. 3, p. 68.

the ground for cancellation applies and it has established that this is indeed the policy of GISS.

2.5.4 Disclosure of a specific use of a method of the service or of the identity of “assistants”

Article 34(7)(c) of the ISS Act 2002 provides that the obligation to examine whether notification is possible lapses if notification will lead to disclosure of the specific use of a method of the service or disclosure of the identity of a person who assisted the service in using the method. This ground concerns the use of methods that fit within one of the special powers described in the Act. It follows from the legislative history that the ground for cancellation is primarily included in order to prevent disclosure of GISS’ level of technical knowledge.⁴⁶ The service may, for example, have used a specific way of entry and may have required the assistance of a third party to do so. If knowledge of the technical possibilities is made public, targets of the service may subsequently adapt their behaviour which may impair the effective performance by the service of its statutory tasks. Another example is the situation that the physical safety of the person who assisted GISS in using the method is endangered.

The Committee points out that the ground for cancellation applies only if it relates to a method of the service that is not generally known. The mere fact that the service has used a directional microphone, for example, cannot have the standard effect of cancellation. It follows from the law that GISS has this power and furthermore the notification letter will only describe the exercise of the special power in general terms. It is the opinion of the Committee that cancellation will only be in order if the specific characteristics of how the special power was exercised give cause for cancellation.

2.6 *Making the obligation to notify part of the organisational structure*

GISS has opted to centralize performance of the obligation to notify. This task has been entrusted to the legal department of GISS. Examinations whether notification is possible are assigned to a processor of this department. If necessary, the processor will obtain information about specific notification proposals from the directorate at whose instigation the special power was exercised. An applicant for permission to exercise a special power will state as early as in his proposal to exercise a special power whether there is reason to decide not to notify. What is said on the subject in the proposal constitutes a provisional indication of the subsequent final decision.

When performing the obligation to notify, GISS makes use of what is called Powers Chart (*Bevoegdhedenkaart*), an application specifically developed for the purpose. Powers Chart provides a largely automated system in which records are kept of all permissions to exercise special powers. In addition, entries are made in the system whether and when a special power has actually been exercised. Powers Chart is used to generate a clear overview showing when the exercise of a power subject to notification creates an obligation to examine whether notification is possible. Powers Chart automatically suspends the obligation to examine until the expiry of the five-year term applying to the exercise of the last special power in regard to the person concerned. On the expiry of this term the Power Chart system generates a report that an obligation to examine whether notification is possible has come into existence.

⁴⁶ *Parliamentary papers II 1999/2000*, 25 877, no. 8, p. 93.

After this initial period of automatic suspension it must be assessed on a case by case basis whether there are indications calling for an extension of the suspension period by another year. The assessment can be processed in Powers Chart, which one year later creates a new obligation to examine whether notification is possible. When the obligation to examine arises, moreover, the system generates a final proposal as to whether or not a ground for cancellation applies. The Power Chart system thus provides for reassessment of the validity of a ground for cancellation five years after the initial proposal on this issue.

One element of the examination whether notification is possible is that of tracing the person concerned. This tracing is done in collaboration with the GISS department responsible for searching open sources, which has direct access to the Online Municipal Personal Records. The processor provides the department concerned with as many identifiable data as possible from the file on the person concerned. If necessary, a further search in GISS' own systems may be done if checking the Online Municipal Personal Records has not yielded clear results. In addition, the processor assesses whether the processed data are relevant to any ongoing investigation and whether a ground for cancellation applies. Eventually, the examination whether notification is possible will result in a notification proposal, which may be that a notification letter will be sent, that notification will be suspended for one year, that the obligation to notify lapses because the person concerned cannot be traced or has died, or that the obligation to examine whether notification is possible lapses because a ground for cancellation applies. At the end of the chain the notification proposals are submitted to the (deputy) head of GISS for signature.

3 Findings of the Committee

3.1 Introductory remarks

The investigation of the Committee covered all notification decisions since the actual entry into force of the obligation to notify on 29 May 2007 until 11 November 2009. The Committee has established that in the review period GISS did not decide in any of the cases to actually submit a notification report. In 43 per cent of the cases the outcome of the examination whether notification was possible was that the person concerned could not be traced. In 25 per cent of the notification decisions the obligation to notify was suspended and in 27 per cent of the notification decisions it was concluded that a ground for cancellation applied. In the remaining cases the person concerned had died, a special power was exercised in regard to an organisation or it was eventually decided not to exercise the special power although permission to do so had been obtained.

3.2 The obligation to examine whether notification is possible

3.2.1 Reasonable term

The Committee has established that in a number of cases a considerable time elapsed between the moment when the obligation to notify came into existence and the moment of taking a decision whether or not the person concerned would be notified. Four times a year a series of notification proposals are presented to the (deputy) head of GISS. This means that the decision-making procedure has the effect that examinations whether notification is possible which are completed early in such a period are kept, at least until the next time a series of notification decisions will be signed. It is the opinion of the Committee that this period must be counted when assessing whether the statutory requirement of a reasonable

term is satisfied. Although no persons have been notified so far, the Committee has established that the decision-making procedure would not have been different if there had been cases in which it would have been decided to submit a notification report.

The Committee can appreciate the policy of clustering notification proposals so that decisions on these proposals can be taken periodically and in batches. The Committee has established that the examinations whether notification is possible, which result in the preparation of a notification proposal, were carried out within a reasonable term.

In the opinion of the Committee, however, it is in principle contrary to the reasonable term requirement if there is a considerable interval between the preparation of a notification proposal and the subsequent notification decision. The Committee observes in this connection that it may happen that a notification proposal is further scrutinized in response to facts or circumstances that have subsequently emerged. In the absence of such facts or circumstances a notification proposal should in principle be dealt with in the following round of decisions. The Committee has established that this did not happen in all cases.

The Committee has established that notification decisions are generally taken within a reasonable term. In a few cases the Committee established that there was a long period between the examination whether notification was possible and the subsequent notification proposal on the one hand and the final notification decision on the other hand. The Committee recommends that GISS exercise due care to ensure that the last phase is completed as soon as possible.

3.2.2 Exercise of a special power in regard to an organisation

The Committee has established that in a number of cases GISS exercised a special power with the objective of gathering information on an organisation. It follows from the ISS Act 2002 that exercising a special power in regard to an organisation is not subject to the obligation to notify. The Committee has established that in the cases in question GISS decided with due care and on rightful grounds that the special power was exercised in regard to an organisation and not in regard to a natural person.

3.3 *Lapse of the obligation to notify*

The Committee has established that in tracing the person concerned GISS usually confines its efforts to searching its own information systems and the municipal personal records database, in the sense that GISS searches its own information systems to collect identity data in order to be able to do a successful search in the municipal personal records database. GISS' own information systems are consulted to find out which potential identification data are known at GISS. These are e.g. date of birth, address, name and, if applicable, aliases. The results of this search are provided to the department at GISS that is charged, among other things, with doing checks in the municipal personal records database. If the search in this database leads to uncertainties, the department gets back to the processor and asks for additional information. This leads to another check in GISS' own information systems in order to get hold of the missing data.

The Committee has established that in a number of cases the search in the municipal personal records database produced the town of residence but no address details. Enquiry at GISS showed that this may mean that the person concerned has gone abroad. The last municipality of registration is required to maintain the person's registration in this municipality so that his personal data remain clearly known should he return to the Netherlands. Another possibility is that a municipal inspection showed that the person in

question did not actually reside at the address stated by him. If this is the case, the address will be removed from the registration entry. The person concerned will, however, continue to be registered in the municipality as his place of residence for the purpose of keeping the personal data.

In a single case the result of a tap showed that the tapped number did not belong to the person in regard to whom the telephone tap had been executed, but, so it emerged later, to an unrelated third party. The Committee holds the opinion that in this case it should have been examined whether notification of this person was possible. The Committee has established that GISS purposefully infringed the privacy of the person concerned, since GISS purposefully continued tapping his telephone for some time to investigate whether the person concerned belonged to the network of the true target. In the opinion of the Committee this means that this person was not a third party as defined in section 2.2.4 of this review report. This is not changed by the fact that subsequently it emerged that this person was not related to the target.

The Committee has established that GISS did try to trace the true target. GISS did a check using the name of the true target in combination with the unrelated third party. The Committee holds, however, that this check clearly could not have led to the true target being traced, since the search terms used by GISS were based on an address where the true target did not live, as GISS itself had proved.

The Committee has found that in one case GISS was unable to trace a person who should have been known to be in a penal institution at the time. The Committee has established that the data of the place of abode of the person concerned were present in GISS' own information system, but that GISS did not use these data when tracing the person. This issue is discussed in greater detail in the secret appendix to the present review report. The Committee recommends that the relevant notification decision be reconsidered taking the foregoing into account.

The Committee has established that GISS, when tracing persons concerned, acted in accordance with the statutory requirements, except for the case mentioned above concerning a person who was in a penal institution. The Committee recommends that the notification decision in that case be reconsidered. This does not mean to say, however, that such reconsideration would lead to notification, since there may be other grounds for deciding not to notify.

The Committee calls to mind the recommendation stated in section 2.3.2 to include other sources than the municipal personal records database in the process of tracing a person concerned. The Committee does not have any indication, though, that in the cases it investigated GISS would have been able to trace the persons concerned if it had done such a wider search, but it cannot exclude it either.

3.4 Suspension of the obligation to notify

Suspending notification is prescribed if the special power was exercised in regard to the person concerned less than five years ago or if data relating to this person was processed in this period for the purposes of the investigation in question. The data must also not be relevant to any ongoing investigation. The Committee has established that in the large majority of notification cases where a ground for suspension applied, the suspension was based on the fact that new data relating to the person concerned had been processed in the past five years. This may mean, for example, that the person concerned was observed in a

surveillance action, that the person concerned was mentioned in a report from a human source or that tapping reports show that the person concerned was still maintaining contacts with persons recently investigated by GISS. In one single case it was decided to suspend notification on the grounds that the data in question was relevant to an ongoing investigation without the person concerned being part of this investigation. The Committee has established that GISS generally proceeds with due care when determining whether a ground for suspension applies. It is the opinion of the Committee that the conclusion that notification must be suspended is always supported by the underlying documents. The Committee has established that GISS links its decisions as much as possible to individual investigations. It is the opinion of the Committee that this approach does justice to the casuistic approach that should be typical of such assessments. Nonetheless, the Committee wishes to discuss one case in which the decision to suspend notification was, in its opinion, not taken on valid grounds.

The Committee has established that in one specific examination whether notification was possible it was established that GISS had decided more than five years ago that it would no longer investigate a certain group, to which the person concerned belonged. For the purposes of that investigation special powers had been exercised at the time in regard to the person concerned. Less than five years ago, in response to a request for information about the matter from a counterpart service, GISS confirmed that it had ceased investigating the group in question. It is the opinion of the Committee that in this case GISS' invocation of a ground for suspension within the meaning of Article 53(10(a) of the ISS Act 2002 was not made on valid grounds. In the opinion of the Committee, confirmation of a prior decision no longer to investigate a certain group cannot be considered a new fact within the meaning of Article 53(1)(a), at 2, of the ISS Act 2002. Moreover, in the margin of the examination report belonging to the relevant notification decision GISS had noted that it must always be possible to take up a case again ad hoc if there was reason to do so. However this may be, the Committee holds the opinion that such a marginal note does not constitute sufficient grounds for deeming an investigation to be an ongoing investigation. The Committee recommends that GISS reconsider the notification decision in question.

The Committee has established that in a number of cases some time elapsed between the initial processing of the results of a special power and the further utilisation of the results in subsequent intelligence products. In connection with the moment the term of suspension begins to run it is relevant to examine under which circumstances it can be said that new data are being processed. The Committee holds the opinion that processing of new data can be said to occur if data that has already been processed is examined in a different context, for example because of the availability of subsequent information. For example, the results of the exercise of a special power can be put in a different light when they are compared with intelligence that has subsequently become available. If this is the case, the five-year period should begin to run at a later date. If, however, the initial examination results are subsequently merely cited and do not or cannot lead to new knowledge, the date of the initial processing should mark the commencement of the five-year period. The Committee has not come across any cases in which it was wrongly decided to suspend the obligation to notify on the grounds of intelligence already available at the time but not used until a later date.

The Committee has established that GISS holds the opinion that suspension of notification is prescribed if the person concerned had contacts in the past five years or still is in contact with a person who is still being investigated. The Committee has established that GISS could

reasonably hold that the contacts in these cases were relevant and more than merely superficial contacts.

In a number of examinations whether notification was possible GISS established that the person concerned formed part of a relatively small network. In such cases GISS stated that it would not notify until there was no longer any ground for suspension applicable to any of the persons in the network. If certain persons from the network should be notified and others not, this could lead to the conclusion that certain persons had recently been, or were still being investigated by GISS. This could lead to disclosure of the current level of knowledge of GISS. The Committee appreciates the position taken by GISS.

The Committee has established that most examinations whether notification was possible involved the exercise of a special power based on the a-task of GISS. A number of cases, however, concerned a special power based on the d-task. In such notification examinations GISS decided that notification must be suspended if the special powers were exercised for the purposes of an investigation in a country which under the current Designation Order was designated as a special-attention country. The Committee considers this to be in accordance with the law.

The Committee has established that GISS, when assessing whether a ground for suspension applied, acted in accordance with the statutory requirements, with the exception of one single case that was discussed above. The Committee recommends that GISS reconsider this case. This does not mean to say, though, that reconsideration would result in notification, because there may be other grounds for deciding not to notify.

3.5 *Cancellation of the obligation to notify*

3.5.1 Source protection

If notifying the person concerned can reasonably be expected to result in sources of GISS, including those of intelligence and security services of other countries, being disclosed, the obligation to notify is cancelled on the ground of source protection. In section 2.4.2 the Committee has taken the position that a technical source, such as a telephone tap, is not a source within the meaning of Article 34(7)(a) of the ISS Act 2002. The Committee has established that GISS took this position in a recent examination report accompanying a notification decision. The Committee has established, however, that with respect to a notification decision of an earlier date GISS decided to cancel notification on the ground of source protection because the telephone number had been obtained by telephone tapping. The Committee holds that this is not in keeping with the intention of the ISS Act 2002. The Committee recommends that GISS reassess the decision in question taking account of the Committee's opinion.

The Committee has established that GISS considers this ground for cancellation applicable if the exercise of a special power can be traced back to information about the person concerned that was obtained from a source of GISS. However, the mere fact that information was obtained from a source does not suffice to make the ground for cancellation applicable. For this to happen it is required that notification can be reasonably expected to lead to the identity of the source being disclosed. The Committee has established that GISS interpreted this requirement by expressing in the notification report that the person concerned had communicated the information to the source of GISS confidentially.

The Committee has established that in some cases an official report on the person concerned was sent to the National Public Prosecutor for Counterterrorism. The Committee has established that one of these official reports contained the telephone number of the person concerned. By acting thus GISS disclosed its knowledge of this telephone number, since the official report might subsequently be added to the case file and be seen by the person concerned. It is the opinion of the Committee that in this situation GISS may no longer decide to cancel the obligation to notify on the mere grounds that the telephone number in question had been communicated to a source of GISS confidentially. This would be different only if notification of the person concerned would provide the person concerned with additional data which would help to disclose the source of GISS. The Committee has in mind the situation that the date on which telephone tapping started makes it clear to the person concerned that there is a connection with his giving the telephone number to the source of GISS.

In a number of cases the underlying file shows that several telephones were tapped in regard to the person concerned. The Committee has established that in cases where one of the telephone numbers had been provided confidentially to a source, GISS also invoked source protection as a ground for cancellation with respect to the other telephone numbers that had been tapped. The reason GISS stated for this was that the notification letter, if sent, would not show which telephone number was tapped and the person concerned might therefore assume that his unlisted number had been tapped.⁴⁷ GISS stated that experience had shown that in such a case the person concerned will seek the person who leaked the information in his immediate surroundings. The Committee subscribes to this position of GISS but holds at the same time that source protection requires the actual exercise of a special power with respect to an unlisted telephone number. In other words, the Committee holds that the source in the surroundings of the person concerned must actually have supplied information about the person concerned on the basis of which a special power was exercised. The mere fact that a source is active in the surroundings of the person concerned does not by itself have the effect that the ground for cancellation of source protection applies.

In one specific case GISS decided to cancel notification on the grounds of source protection because a telephone number had both been obtained from a human source and become known to GISS by the use of a technical means. Since the person concerned was not aware of the use of the technical means, and could only guess at this, the Committee agrees to the position taken by GISS that the ground for cancellation of source protection applied in this case.

The Committee has established that in a number of cases GISS communicated with foreign counterpart services about the person concerned. In this context the Committee distinguishes between two situations.

On the one hand the Committee recognizes the situation where there is a direct connection between information obtained from the counterpart service and the exercise of the special power. The Committee has established that in a number of cases the provision of information by the counterpart service led directly to the exercise of special powers in regard to a specific person. It is possible that the information resulted in an investigation of a person who previously was unknown to GISS. It is also possible, however, that the information obtained resulted in the exercise of a specific special power in regard to a person who was already

⁴⁷ Article 34(3), first sentence and at (b), of the ISS Act 2002 says on this subject: "The report will be in writing and contain exclusively: [...] an indication of the special power as referred to in the first paragraph that has been exercised with regard to the person in question."

known to GISS. This is the case, for example, where GISS obtained a telephone number of the person concerned that so far had remained unknown to GISS from a counterpart service, which resulted in a telephone tap on this telephone number. The Committee has established that in a number of cases the counterpart service, when providing the information, stated at the same time that the information came from a sensitive (human) source.

On the other hand the Committee recognizes the situation where there have been general communications between GISS and a counterpart service about a person qualifying for notification, for example in the context of an investigation of a specific organisation to which the person in question belongs. But the information from the counterpart service did not result in a more intensive personal investigation of the person concerned. The communications may, for example, have consisted of an exchange of general information about the organisation in question.

The Committee has established that it was only in the former situation that GISS cancelled notification on the ground of Article 34(7)(a) of the ISS Act 2002, which the Committee considers to be in agreement with the objective of the Act.

The Committee has established that GISS acted in accordance with the statutory requirements when determining whether the ground for cancellation of source protection applied, with the exception of two cases that were discussed above. In one case a technical source was wrongly deemed to be a source within the meaning of Article 34(7)(a) and in the other case the telephone number that had been provided confidentially had already been disclosed in an official report. The Committee recommends that GISS reconsider these notification decisions. This does not mean to say, however that reconsideration would lead to notification, since there may be other grounds for not notifying.

3.5.2 Serious damage to relations with other countries and international organisations

The Committee has established that in a number of cases GISS decided to cancel notification because notifying the person concerned could be reasonably expected to have the effect of seriously damaging relations with other countries and with international organisations (Article 34(7)(b) of the ISS Act 2002).

The Committee has established that the exercise of the power to select data obtained by using the technical device of receiving and recording non-specific non-cable-bound telecommunications pursuant to Article 27(3)(a) and (b) of the ISS Act 2002 (“Sigint”) results without exception in cancellation on the grounds of serious damage to relations with other countries and international organisations. The Committee has established that as a rule the exercise of Sigint goes hand in hand with tapping non-cable-bound telecommunications coming from another country. This violates the sovereignty of the country involved and disclosure of the fact that GISS has exercised this power may cause serious damage to relations with other countries.

The Committee has established that GISS, for the purposes of its a-task, among other things investigates espionage activities of foreign powers. Such investigations may entail the exercise of special powers that are subject to the obligation to notify. The Committee has established that in such cases GISS holds the opinion that the ground for cancellation under consideration here applies. In view of the extremely sensitive nature of such investigations and the far-reaching consequences they may have for relations with other countries, the Committee holds that in these cases the invocation of this ground for cancellation is in agreement with the ISS Act 2002. The Committee has established that GISS is increasingly open about intelligence activities of other countries in the Netherlands, as emerges *inter alia*

from recent annual reports of GISS. However, GISS' statements on the subject cannot be traced to individual cases and neither do these reports state expressly that in actual cases the investigations into such activities were carried out by exercising special powers.

The files on a number of notification decisions show that an investigation of the person concerned was started on the basis of information obtained from counterpart services. In these cases the ground for cancellation under discussion here was considered applicable, whether or not in combination with other grounds. Like GISS, the Committee holds that notification might lead to serious damage to relations with other countries or international organisations. The Committee refers to the criteria for applicability of the ground for cancellation of source protection that were set out in the preceding section. In the opinion of the Committee the decisive factor for the applicability of the ground for cancellation under consideration here is the fact that notification of the person concerned can be reasonably expected to be traceable to the information provided by the counterpart service.

The Committee has established that GISS acted in accordance with the statutory requirements when determining whether the ground for cancellation of serious damage to relations with other countries or international organisations applied.

3.5.3 Disclosing a specific use of a method of the service or the identity of "assistants"

The Committee has established that in some cases GISS decided to cancel notification on the cancellation ground that notification would disclose a specific use of a method of GISS or the identity of the person who assisted GISS in using the method (Article 34(7)(c) of the ISS Act 2002). The Committee has found that these decisions were taken in accordance with the Act.

The Committee is aware that the decision that this cancellation ground applies is a final decision. It points out, however, that in the opinion of the Committee this cancellation ground does not have the same permanent nature as the other two cancellation grounds. The Committee calls to mind that in principle a specific use of a method of GISS concerns the specific technical possibilities at the disposal of GISS.⁴⁸ The Committee has established that the current state of the (technical) art plays an important role in this context. In one case, for example, the Committee found that five year after a – previously unknown - technical capacity of GISS was used, it had become generally known. It is the opinion of the Committee that GISS, when reassessing the cancellation ground, rightly decided that the cancellation ground did not apply, in spite of the fact that it had been put forward at the time on good grounds.

The Committee has established that GISS acted in conformity with the statutory requirements when determining whether the cancellation ground that notification would disclose a specific use of a method of GISS applied.

4 Concluding observations

The Committee has established that apart from a few exceptions, GISS performed the obligation to notify in accordance with the statutory requirements. Possibly, some of the observations made in the foregoing will lead to a notification letter being sent to the person concerned after all. In the majority of the investigated notification decisions GISS decided on

⁴⁸ See section 2.5.4 above for a more detailed interpretation of the term "specific use of a method".

good grounds that the obligation to notify would be suspended or cancelled. The Committee thinks it probable, moreover, that the decisions that will be reconsidered will subsequently lead to a decision not to notify on other grounds. The Committee takes the position that this justifies the conclusion that so far the obligation to notify has not made an actual contribution to the possibilities for individuals to challenge an allegedly unlawful exercise of special powers by GISS. There is, however, no simple answer to the question whether this will be different in the (near) future.

The obligation to notify shows strong similarity to the rules on applications for inspection of files. The grounds for cancellation and suspension are even largely identical. The Committee has established that actual practice with regard to applications for inspection of files shows that data are released to a fairly large extent, while so far not one single notification letter has been sent. The main reason for this is the fact that applications for inspection of files may relate to any and all data in the possession of GISS. On the one hand this means that an application may relate to data from a more distant period. For example: a substantial part of applications for inspection of files relates to data collected during the Cold War. On the other hand applications for inspection of files are not limited to data in the possession of GISS that were obtained by the exercise of a select number of powers. In practice, moreover, applications for inspection of files do not involve problems with tracing the person concerned, since this person himself or herself states where he lives. The notification procedure is frustrated by the failure to trace the person concerned in nearly half of the cases.

It is the opinion of the Committee that it cannot be said that the grounds for cancellation as such are formulated too broadly. The grounds for cancellation do justice to the lawful interests to be protected by GISS. It is a fact that the nature of the special powers that are subject to the obligation to notify is such, that they often go hand in hand with the applicability of a ground for cancellation. Examples are the exercise of Sigint and the virtually inevitable connection with the ground for cancellation of serious damage to relations with other countries.

It is true that on the subject of traceability there is some difference of opinion between the Committee and GISS about the interpretation to be given to the term reasonable effort. The Committee has established, however, that it will not be possible to trace a substantial part of persons concerned without making far-reaching, disproportional tracing efforts. This is partly due to the mere lapse of time between the termination of the investigation of a person concerned and the start of the examination whether notification is possible.

The Committee has established that only a small number of the operational investigations started since 2002 are deemed or can be deemed to have been completed. As a rule, investigations of GISS are long-term affairs. This is true, for example, for investigations of terrorist or jihadist networks. These networks are typically rather fluid. GISS will for a long time keep a finger on the pulse in regard to persons investigated at some point in the course of such investigations. In addition, the exercise of special powers is not the final piece of an investigation but usually rather the reason for undertaking further investigative activities. This does not change the fact that investigations must come to an end and that this will eventually cause the grounds for suspension which are currently applicable to lapse. This means that in the long term more notifications will be effected. It is not inconceivable that with the lapse of time the value of notification will decline for the person concerned.

The Committee has established that the performance of the obligation to notify takes up a considerable part of GISS' capacity and that this will only increase in the future. The

Committee also has established that even though GISS generally performs the obligation to notify in a lawful manner, no notification letters have been sent so far. It is the opinion of the Committee that it is not possible to explicitly infer an active obligation to notify from the ECHR and the relevant case law of the ECtHR on the subject, and that the weight of such an obligation must be balanced against the complex of other existing legal safeguards. In this context the Committee draws attention to the means of redress already available to individuals, such as filing a complaint in reaction to allegedly improper conduct by GISS and the possibility of filing an application for inspection of the personal data that have been processed by GISS. In this context the Committee comments that such applications must be dealt with on the basis of the same principles that underlie the obligation to notify. The point, therefore, is the added value of the obligation to notify for the Dutch system of legal protection. In this connection one may also raise the question whether the costs of performing the obligation to notify are justified by the benefits. This involves a balancing of interests, however, which is not the responsibility of the Committee but of the legislator.

5 Conclusions and recommendations

- 5.1 The Committee has established that apart from a few exceptions, GISS performed the obligation to notify in accordance with the statutory requirements (section 4).
- 5.2 The Committee has established that GISS, when tracing a person concerned, usually confines its efforts to searching its own information systems and the municipal personal records database, in the sense that GISS' search of its own information systems serves to collect identity data in order to enable GISS to do a successful search in the municipal personal records database. It is the opinion of the Committee that GISS' own information systems can also play an independent role and should not be used only as a supplement to the municipal personal records database. It is the opinion of the Committee that GISS may be expected to enquire from the local Regional Intelligence Service (*RID*) or another relevant body within the meaning of section 60 of the ISS Act 2002 whether they happen to have information of their own about the actual abode of a person concerned if the file available to GISS contains indications that such an enquiry may lead to some result. The Committee recommends that GISS adjust its tracing policy on this point. It has no indication that in the cases it investigated the persons concerned could have been traced if GISS had made this further search, but cannot exclude it either (section 2.3.2).
- 5.3 The Committee has established that GISS gives a broad interpretation to the notion of 'ongoing investigation', linking it to the threat emanating from certain phenomena in society. The link with such a wide field of investigation may have the result that there will be no notification of one person as long as there is still a related, if only remotely, ongoing (sub)investigation. It is not to be expected, moreover, that any of the aforementioned phenomena will cease to be an area of responsibility for GISS. The ground for suspension may thus come to acquire a permanent nature, which the Committee considers not to be in accordance with the intention of the legislator, nor with the relevance requirement of Article 53(1)(a), at 3, of the ISS Act 2002. The Committee recommends that GISS link the definition as much as possible to concrete investigations instead of phenomena in society. The Committee has established, however, that in practice GISS does indeed make this link with concrete investigations and decided to suspend notification on good grounds, with the exception of one case mentioned in conclusion 5.5 (section 2.4.3).

- 5.4 The Committee has established that GISS, when tracing persons concerned, acted in accordance with the statutory requirements, with the exception of one single case. The Committee recommends that the notification decision in that case be reconsidered. This does not mean to say, however, that such reconsideration would lead to notification, since there may be other grounds for deciding not to notify (section 3.3).
- 5.5 The Committee has established that GISS, when assessing whether a ground for suspension applied, acted in accordance with the statutory requirements, with the exception of one single case. The Committee recommends that GISS reconsider the notification decision taken in this case. This does not mean to say, though, that such a reconsideration would lead to notification, because there may be other grounds for deciding not to notify (section 3.4).
- 5.6 The Committee has established that with the exception of two cases GISS acted in accordance with the statutory requirements when determining whether the ground for cancellation of source protection applied. In one of these two cases a technical source was wrongly deemed to be a source within the meaning of Article 34(7)(a) and in the other the telephone number that had been provided confidentially had already been disclosed in an official report. The Committee recommends that GISS reconsider these notification decisions. This does not mean to say, however, that such reconsideration would lead to notification, since there may be other grounds for deciding not to notify (section 3.5.1).
- 5.7 The Committee has established that GISS acted in accordance with the statutory requirements when determining whether the ground for cancellation of serious damage to relations with other countries or international organisations applied (section 3.5.2).
- 5.8 The Committee has established that GISS acted in conformity with the statutory requirements when determining whether the cancellation ground that notification would disclose a specific use of a method of GISS applied (section 3.5.3).

Adopted at the meeting of the Committee of 24 February 2010.