

Appendix I

to the review report on
the multilateral exchange of data
on (alleged) jihadists by the AIVD

CTIVD no. 56

[adopted on 7 February 2018]



Review Committee
on the Intelligence and
Security Services

Investigation plan and methodology

Delimitation

What has been investigated?

The CTIVD conducted an investigation into the multilateral exchange of data by the AIVD within a number of cooperative partnerships. The CTIVD conducted an in-depth investigation into the cooperation within the Counter-Terrorism Group (CTG) and into multilateral sigint cooperation. These forms of cooperation involve the intensive multilateral exchange of personal data.

The CTIVD decided to focus on the multilateral exchange of data which takes place within the context of the investigation by the AIVD into (the threat deriving from) the Syria/Iraq conflict area.

What has not been investigated?

The multilateral exchange of data on jihadists active in or persons returning from other areas, such as North Africa, has not been investigated.

The CTIVD did not conduct an in-depth investigation into the cooperation or exchange of data by the cooperative partnerships investigated with third parties, such as that taking place between the CTG and Europol or with third-country services.

The CTIVD did not conduct an investigation of the effectiveness of the multilateral cooperation.

Investigation plan

The CTIVD has observed that the developments in multilateral cooperation have swiftly progressed over the course of its investigation. The AIVD often adopted a pragmatic course of action in this connection, which has also led to a relatively quick intensification of the multilateral cooperation between intelligence and security services. In its investigation, the CTIVD constantly posed the question of what the AIVD's responsibilities are in these ever-changing circumstances and whether they are adequately implemented on the basis of the ISS Act 2002.

Against this backdrop, the CTIVD opted for a broad, systemic approach in its lawfulness review. It reviewed the way multilateral cooperation as a whole is organised and its effectiveness. In this connection it investigated whether the system of the multilateral data exchange contains sufficient

safeguards for the protection of the individual. Additionally, it investigated the extent to which the AIVD's internal policy provides such safeguards. It also performed random checks of its implementation in practice.

In a sense, the results of this investigation provide an image of the current cooperation. This concerns a snapshot, showing where, at this point in time, sufficient safeguards for the protection of the individual are in place and where they are not, and what the possible risks are. In this way, the CTIVD has aimed, in its investigation plan, and in its findings, conclusions and recommendations, to do justice to the developments that the multilateral cooperation is currently undergoing.

Investigative questions

The following question was central to this investigation:

How has the multilateral exchange of data on (alleged) jihadists by the AIVD been organised and is this exchange of data lawful?

This core question can be subdivided into the following sub-questions:

1. What is the AIVD's role in the multilateral approach to international jihadism? Within which multilateral cooperative partnerships does the AIVD exchange personal data in the context of dealing with jihadists?
2. How is personal data exchanged? What (new) forms of cooperation are there?
3. What is the legal basis for the identified forms of data exchange?
4. Are there adequate safeguards for the protection of fundamental rights? How does the AIVD implement these safeguards in practice?
5. Are there any risks that need to be addressed?

Methodology

Exploration

In order to obtain a general overview, the CTIVD conducted an exploratory investigation and consulted with some team heads and other members of the AIVD's counter-terrorism teams. On the basis of this exploratory investigation, it drew up an internal plan of action for the investigation.

Investigation of the facts

The CTIVD investigated the following aspects in the AIVD's systems:

- The weighting notes adopted by the Minister of the Interior with respect to the foreign services participating in the CTG or sigint cooperation;
- The multilateral agreements concluded within the CTG or sigint cooperation and laid down in agreements, policy documents, procedures, records of meetings or consultations, telex messages, etc.;
- Internal AIVD policy, as found in the adopted policy documents, procedures and meeting records;
- The development of (new) forms of cooperation or means of data exchange within the CTG and sigint cooperation;
- Multilaterally exchanged personal data in which has been recorded in target lists, the CTG database, other shared data files, records of (operational) meetings or consultations, telex messages, etc. This investigation took place by way of random checks.

Consultations

In addition, the CTIVD consulted with the three CT team heads, a CT team analyst, two senior CT team processors, a project leader, the head of the Foreign Relations department, the head of the Legal Affairs department, a number of legal assistants, a political adviser and various officials of the Joint Sigint Cyber Unit (JSCU).¹ Some of these persons have been consulted multiple times. These consultations served to supplement the body of facts or to provide it with additional context. During some of these consultations, additional documents have been submitted at the CTIVD's request.

MIVD

The investigation did not focus on the MIVD. However, the findings, conclusions and recommendations with respect to sigint cooperation apply equally to the AIVD and the MIVD, as both services are involved in this form of cooperation. The MIVD and the Minister of Defence have been given the opportunity to respond to the drafted report.

Experts' report

The CTIVD's assessment of the legal basis of the (new) forms of cooperation currently taking place in the context of the multilateral cooperation of the AIVD with foreign services may have fundamental consequences to the AIVD. International law, inter alia in the fields of state liability and data protection, is relevant in this connection. Where the cooperation between intelligence and security services is concerned, these legal areas are still in constant development.

Against this backdrop, the CTIVD, in order to process carefully, engaged two experts on the above-mentioned areas of law, on the basis of Article 76 of the ISS Act 2002. These experts were instructed to draw up an experts' report on the legal basis of and the division of responsibilities within the CTG database (refer to Appendix IV).

The experts' assignment was initially based on a fictitious case derived from the Europol Information System. The CTIVD formulated questions on the basis of this case. During the experts' investigation, the AIVD published more information on the CTG database. This allowed the CTIVD to further detail the questions posed to the experts and provide them with additional context. It also posed additional questions. The CTIVD consulted with the experts at various points in time.

Investigation period

This report is concerned with the multilateral exchange of data on (alleged) jihadists by the AIVD from early January 2015 onward. The investigation was concluded with the drafting of the report in late June 2017 and therefore covers a period of two and a half years. The report was re-drafted in late October, also in view of the request for the experts' report. Important (policy) developments that took place in the period from June through October 2017 have been included in the report. No comprehensive update of the investigation was performed.

¹ The JSCU is the joint unit of the AIVD and the MIVD that processes data in the areas of sigint and cyber.

Timeline

The investigation was announced to both Houses of Parliament, the Minister of the Interior and the AIVD on 10 March 2016. The CTIVD drafted its review report on 21 June 2017. The CTIVD gave the instruction to draft an experts' report on 6 September 2017. The responses of the AIVD and the MIVD to the drafted report were received on 7 and 12 September 2017, respectively. The experts' report was finished on 22 October 2017. The CTIVD re-drafted the review report on 25 October 2017. The response of the AIVD and the MIVD to the re-drafted report was received on 24 November 2017. This response stated that the drafted report had been translated for reasons of consulting with the other services participating in the CTG. The Minister of the Interior will consider the results of this consultation in her response to the drafted report. It was not deemed necessary to consult with the sigint partner services. The response of the Ministers of the Interior and of Defence was received on 7 February 2018. The review report was adopted on 7 February 2018.

