



Appendix II: Investigation plan and methodology

To the review report on the collection
and further processing of airline passenger
data by the AIVD and the MIVD

CTIVD no. 71

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Review Committee
on the Intelligence and
Security Services

To the review report on the collection and further processing of airline passenger data by the AIVD and the MIVD

Investigation plan and methodology

In this appendix, the CTIVD explains the plan and methodology of the investigation into the collection and the further processing of passenger data by the AIVD and the MIVD.

Focus of the investigation

The CTIVD conducted an in-depth investigation into the collection and further processing of Advance Passenger Information (API data) by the AIVD and the MIVD.¹ API data is data on passengers of a flight and information about that flight that is stored by the airlines such as name, date of birth, nationality, airport of departure and of arrival. It concerns flight information from outside the EU or outside the Schengen area with a Dutch airport as destination. The airlines store API data and they must provide that information to the Royal Netherlands Marechaussee (KMar) under the EU Directive 2004/82/EC (API directive). The KMar processes the data for its own task – border control. The AIVD collects the API data from the KMar based on a general investigatory power, in this case the power to use informants (Section 39 of the ISS Act 2017). The vast majority of this data concerns organizations and/or people who are not the subject of investigation by the services, nor ever will be. That means it is actually the collection and further processing of a bulk data set.

Investigation period

The investigation covers the period from 1 January 2019 to 1 September 2019.

Investigative questions

With its investigation, the CTIVD answers the following investigative question:

Did the AIVD and the MIVD collect and further process API data from airlines lawfully in the period from 1 January 2019 to 1 September 2019?

Scope of the investigation

The CTIVD opted to demarcate the investigation as follows:

- The investigation focuses on API data. This is short for Advance Passenger Information;
- The investigation is aimed at API data that is obtained by the AIVD and the MIVD routinely and by automated means.

¹ The announcement is accessible on www.ctivd.nl.

Outside the scope of the investigation

This investigation focuses on the collection and further processing of API data. That means that this investigation does not include the collection and processing of other passenger data, such as *Passenger Name Records* (PNR details). Nor does this report investigate other possible bulk data sets that are collected using general investigatory powers, such as the power to use informants.

The CTIVD opted for this demarcation given the public debate on bulk data processed by the services using the special investigatory power of investigation-related interception. The CTIVD has previously issued its opinion in report no. 55 (2018) on the collection using the general investigatory power (the power to use informants) of bulk data sets offered on the internet by third parties. That investigation included the announcement that an in-depth investigation would be carried out at some point into the collection of bulk data sets based on the investigatory power to use informants (Section 39 of the ISS Act 2017).

Investigation method

The lawfulness of the collection and further processing of data was checked against the assessment framework. The legal framework is based on the ISS Act 2017 and further consists of the Policy Rules of the ISS Act 2017, the services' policy, the commitments undertaken by the Minister of the Interior and Kingdom Relations and the Minister of Defence, the standards ensuing from the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECHR) and the recommendations made by the CTIVD and adopted by the relevant minister.

For its investigation, the CTIVD conducted interviews with staff of the various teams at the AIVD and the MIVD. Furthermore the CTIVD investigated the logging activities carried out in May 2019 of the application used to process API data. The realization of access to logging data and the analysis of this data was conducted in cooperation with staff from the CTIVD's IT unit. This technical investigation gave direction to the interviews which the CTIVD conducted with staff from the AIVD and MIVD departments who use API data. It also led to specific investigatory activities in the cases where the CTIVD established deviations in the use of the application. This innovative investigatory method of technical nature proved very useful.

Duration

On 25 September 2019, the CTIVD announced it would conduct a lawfulness investigation into the processing of passenger data from airlines.² The investigation concluded on 10 June 2020 when the draft review report was finalized. The Minister of the Interior and Kingdom Relations and the Minister of Defence were given the opportunity to respond to the findings given in the draft report. The responses of the Minister of the Interior and Kingdom Relations and the Minister of Defence were received on 14 August 2020. The review report was adopted on 19 August 2020.

² See www.ctivd.nl.

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