

REVIEW COMMITTEE
ON THE
INTELLIGENCE AND SECURITY SERVICES
(CTIVD)

ANNUAL REPORT
2007 - 2008

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The annual report was closed at 31 March 2008

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ANNUAL REPORT 2007-2008

Introduction

In the period covered by this annual report of the Review Committee on the Intelligence and Security Services (CTIVD), the period from 1 April 2007 up to and including 31 March 2008, the Western world did not find itself faced with any large-scale terrorist attacks like the attacks that took place in 2001 in New York and Washington, in 2004 in Madrid, and in 2005 in London.

Today society, nevertheless, is pervaded with an awareness that what has happened elsewhere, can also happen in our own society.

These circumstances have resulted in a growing interest in the activities of the Dutch intelligence and security services: the General Intelligence and Security Service, the AIVD (and the Regional Intelligence Services), and the Defence Intelligence and Security Service, the MIVD.

In other societies, such as Great Britain, for a long time there has been an awareness that the British security service has substantially contributed to combating terrorist attacks of the IRA.

For several decades, there have hardly been any terrorist attacks in our country, and, partly as a result of this, the importance of the activities of the intelligence and security services did not easily get through to public awareness. Today, this situation is changing: citizens are becoming more aware of the intelligence and security services, in particular the AIVD, and they are also becoming more appreciative of the services.

For the CTIVD the past year under review was characterised by several highlights, possibly better referred to as: special events.

In the area of investigations and reports by the Committee two investigations are particularly noteworthy:

- the investigation into alleged acts of torture carried out by the MIVD in Iraq, its report of which the Committee presented to the press on 17 June 2007,
- and the investigation into the level of attention the AIVD had for the later murderer of Theo van Gogh, instigated in response to the request made to the Committee by the Lower House of Parliament through the Minister of the Interior and Kingdom Relations in January 2007.

In June 2007, the Committee organised an extensive international symposium in the Knights' Hall in The Hague on the subject: "Accountability of intelligence and security agencies and Human Rights". In this context the Committee received the support of Prof Y. Buruma of the Radboud University in Nijmegen.

Some 200 participants from 9 countries debated intensively with the speakers and with one another on this subject and related subjects. The texts of the addresses and discussions have been bundled; several copies of the bundle are still available with the Committee. The texts have also been published on the website of the Committee, www.ctivd.nl.

In response to an interesting legal issue the Committee encountered in the course of its investigations, the Committee organised a (private) study session on the subject: "Intelligence activities in foreign countries" in The Hague in October 2007.

Some 60 participants were involved. The report of the study session is available on the website of the Committee, www.ctivd.nl.

The Committee has also reviewed to what extent its recommendations, made in its reports over the last few years, and the responses of the Ministers concerned to these recommendations, have resulted in adjustments of the working procedures of the AIVD and the MIVD respectively. The Committee has drawn up two reports pertaining to this inventory: report no. 18a on the AIVD and report no. 18b on the MIVD. On the completion of this annual report these reports had not yet been sent to both houses of Parliament by the Minister of the Interior and Kingdom Relations and the Minister of Defence, respectively. A concise summary of the findings of the inventory is included in Chapter 3 of this Annual Report.

In addition to the above activities, the Committee completed or instigated various other investigations, several advisory reports on complaints were issued to the Ministers concerned, and the Committee was actively involved in performing its statutory tasks, the main task consisting of supervising the legitimacy of the activities of the AIVD and the MIVD.

A list of all reports issued by the Committee is included as appendix I to this Annual Report.

The activities of the Committee during the period under review will be discussed in more detail in the rest of this Annual Report.

Chapter 1

The Review Committee, its statutory tasks, composition and organisation

Statutory tasks

The Review Committee on the Intelligence and Security Services commenced its activities on 1 July 2003. This is now its fifth annual report. The institution of the Committee is provided for in the Intelligence and Security Services Act 2002 (hereinafter referred to as: the WIV 2002)¹, which became effective on 29 May 2002. Under Article 1 of this Act these services are understood to consist of the General Intelligence and Security Service (AIVD) and the Defence Intelligence and Security Service (MIVD), which come under the Minister of the Interior and Kingdom Relations and the Minister of Defence, respectively. The supervisory task of the Committee also covers the coordinator for the intelligence and security services, who falls under the Prime Minister, the Minister of General Affairs (see Article 4).

The description of the Committee's statutory duties also includes the supervision over officials employed with the police, the Royal Netherlands Military Constabulary and the Customs and Tax Administration, insofar as these officials carry out activities for the AIVD (see Article 60). A legislative proposal is under preparation which also brings officers of the Immigration and Naturalisation Service (IND) under the scope of this Article (as part of the so-called Post-Madrid measures discussed in Chapter 6 of this annual report).

Chapter 6 of the WIV 2002 (the Articles 64-84) describes the composition, tasks and powers, as well as various other subjects relating to the Committee. The Committee's tasks and powers are also referred to in other provisions of this Act, in particular Article 34, second paragraph and Article 55, third paragraph.

Under Article 64, second paragraph of the WIV 2002, the Committee is responsible for:

- a. supervising the legitimacy of the execution of the provisions of or in accordance with the WIV 2002 and the Security Investigations Act (WVO)²;
- b. informing and advising (both asked and unasked) the Ministers concerned on any findings of the Committee;

¹ See Bulletin of Acts and Decrees 2002, 148 (most recently amended by law of 2 November 2006, Bulletin of Acts and Decrees 574).

² Bulletin of Acts and Decrees 1996, 525 (most recently amended by law of 11 October 2007, Bulletin of Acts and Decrees 2007, 508).

- c. advising the Ministers concerned on the investigation and assessment of complaints;
- d. providing the Ministers concerned with unsolicited advice on the so-called notification obligation, laid down in Article 34 of the Act, which has become applicable five years after the entry into force of the WIV - thus from 29 May 2007.

Of these tasks the task referred to under a., supervising the legitimacy of the activities of the services, is in practice by far the most important task for the Committee. Within the context of the supervision over the legitimacy the Committee pays close attention to, among other things, the exercise of special powers by the services. These involve powers that (may) infringe on human rights recognised by the Netherlands, in particular the protection of privacy, and that may therefore only be exercised under strict conditions.

For example, the WIV 2002 prescribes that the services may only use special powers or means of intelligence (see the Articles 20-30) if this is necessary for the proper fulfilment of the tasks entrusted to the services (Art. 18). Furthermore, these special powers or means of intelligence may only be used with due observance of the requirements of proportionality and subsidiarity (Articles 31 and 32), which means that the use of these powers must be in reasonable proportion to the purpose for which the powers or means of intelligence are used, while the use of less far-reaching, for citizens and their privacy less intrusive, powers or means of intelligence, for example the use of open sources, is not possible. In every investigation the Committee carefully assesses whether (among other things) these three requirements have been met.

In the course of its investigations into the legitimacy of the activities of the services, the Committee is sometimes faced with issues regarding efficiency. In the context of the task defined under b. (informing and advising the Ministers about its findings) the Committee also informs the Ministers of its findings in this context. This is in accordance with the position taken by the government in the parliamentary discussion of the legislative proposal, and with the wish expressed to the Committee by the Ministers concerned.

Under Article 80 of the WIV 2002 the Committee is to issue a (public) report on its activities on an annual basis before the first of May. The report is submitted to both Houses of Parliament and the Ministers concerned: the Prime Minister, Minister of General Affairs, the Minister of the Interior and Kingdom Relations, and the Minister of Defence.

Article 10 of the Committee's Rules of Procedure provides that in order to emphasise the current nature of the report, it will cover the period from 1 April of the previous calendar year up to 1 April of the current year. This fifth annual report of the Committee therefore covers the period from 1 April 2007 to 1 April 2008.

In accordance with Article 8, third and fourth paragraph of the WIV 2002, which is also applicable to the annual reports of the Committee according to Article 80, this public

report will not state any information relating to the means used by the services in specific cases, nor to secret sources or to the current level of knowledge of the services. It is, however, possible for the Minister concerned to inform Parliament of this confidentially. So far all annual reports of the Committee, including the present one, are entirely public; there are no secret appendices. The annual reports are also published on the website of the CTIVD: www.ctivd.nl.

The Committee and its organisation

The Committee consists of three members who work on a part-time basis.

In the year under review the composition of the Committee changed: On 1 January 2008, after four and a half years of service, Prof Dr C. Fasseur terminated his membership of the Committee. He was succeeded by mr. A.H. van Delden.

As of 1 January 2008 the composition of the Committee is as follows:

Mrs. I.P. Michiels van Kessenich-Hoogendam, chair,

Mr. B.A. Lutken, member,

Mr. A.H. van Delden, member.

Mrs. P.W.M. Wiegers acts as the secretary to the Committee.

At the end of the year under review, the Committee's staff consists of five (full-time) legal staff members who perform research activities.

The Committee also has the support of a secretary.

By Order in Council the Committee's chairperson has been charged with the appointment, suspension and dismissal of officers belonging to the staff and the Committee's secretariat, respectively, up to and including salary scale 14.³

In order to be appointed, all members and staff of the Committee have to successfully undergo a category A security clearance investigation. Before commencing their activities the members take the oath or make a solemn affirmation before the Prime Minister, as described in Article 65, paragraph 5, WIV 2002. The other staff of the Committee take the oath or make a solemn affirmation before the chairperson of the Committee.

The organisation of the Committee is too small to enable it to carry out all functions under its own management. Therefore, with regard to several functions the Commissie has concluded so-called service level agreements with the Ministry of General Affairs.

³ See Royal Decree of 14 May 2003, Bulletin of Acts and Decrees 258.

Examples are the security of the offices of the Committee and the maintenance of the digital systems.

The Committee is fully independent, also financially. It has its own budget statement laid down in the law, which also provides for the budgets of the Ministry of General Affairs and the Queen's Secretariat.

The Committee has a website, www.ctivd.nl, which contains information on its composition, tasks and powers. The (public) supervisory reports of the Committee are published on the website, as well as its annual reports and notifications on other activities of the Committee.

Chapter 2

The Committee's procedures

The Committee is free in choosing the subjects of its investigations, although it may be invited by either of the Houses of Parliament to conduct a specific investigation (Art. 78, paragraph 2, WIV 2002). During the past years the Lower House of Parliament made such requests to the Committee several times, via the Minister of the Interior and Kingdom Relations. The Committee aims to accede to such requests, and in the shortest term possible. The Committee considers it highly important to support the supervisory task of the two Houses of Parliament as well as possible through its investigative activities and reports.

Once the Committee has decided to conduct a specific investigation (on its own initiative or at the request of the Ministers concerned or one of the Houses of Parliament), the Ministers concerned and the chairpersons of the two Houses are informed of this decision.

The investigation of the Committee consists of inspecting files, hearing persons, and examining the applicable - national and international - legislation and regulations. In this context the legislator has provided the Committee with far-reaching powers.

For example, under Article 73 WIV 2002 the Committee has immediate access to all data processed within the context of the implementation of the WIV 2002 and the Security Investigations Act. At issue is therefore not only information contained in documents issued by or authorised by the executive level of the services, but also each document found at one of the services which the Committee believes to be relevant to an investigation instituted by the Committee and to the issues related to such an investigation.

Furthermore, everyone involved in the implementation of these two Acts, thus primarily the staff members of the services, is to provide information if so requested by the Committee and cooperate with the Committee insofar as this is necessary for the Committee's proper functioning. The only reservation made to these dual powers is that, if there is cause for this, the services can indicate which specific intelligence is to remain for the Committee's eyes only in the interests of national security.

The Committee is entitled to summon persons to appear before the Committee as a witness. Witnesses thus summoned have a statutory obligation to appear and to give the Committee all information the Committee deems necessary, of course only insofar as they are cognisant with the information. If a person refuses to obey a summons to appear

before the Committee, the Committee can issue a warrant to bring a person before the Committee. The Committee is also entitled to hear witnesses under oath or solemn affirmation. These far-reaching powers are described in Articles 74 and 75 WIV 2002.

The supervisory reports contain the findings, conclusions and recommendations of the Committee in a specific investigation. These can be helpful to both the services and the Ministers responsible for the services, as well as to the Houses of Parliament in the execution of their respective tasks.

The Committee regularly consults with the Prime Minister, Minister of General Affairs, the Minister of the Interior and Kingdom Relations, and the Minister of Defence.

It also regularly consults with the three committees of the Lower House that have a special involvement in the functioning of the intelligence and security services: the Committee for the Intelligence and Security Services, the Standing Parliamentary Committee for Interior Affairs and Kingdom Relations and the Standing Parliamentary Committee for Defence. In addition, there are regular consultations with the Standing Parliamentary Committees for Interior Affairs and Kingdom Relations/General Affairs and Foreign Affairs, Defence and Development Assistance, respectively, of the Upper House.

During these interviews, there is an intensive exchange of views on the findings and recommendations of the Committee in its reports.

It goes without saying that the Committee is in frequent contact with the executive level and other staff of the two services.

According to the parliamentary history of the WIV 2002 the legislator took the position that *direct* dispatch of the supervisory reports produced by the Committee to the two Houses of Parliament was undesirable, because the Minister has to be able to assess the publication of the information presented in such reports against the interests of the state and national security. Dispatch to Parliament therefore occurs through the intervention of the Minister concerned, who also separately provides Parliament with his or her comments on the report.

This procedure means that the Minister concerned is twice given the opportunity to respond to the Committee's report before it reaches Parliament. The first time is after the Committee has *drawn up* its report. The Minister has the opportunity within a reasonable period to be determined by the Committee (which the Committee had initially set at six weeks, but which it has now after having learnt from experience, brought back to four weeks) to respond to the report and the findings and recommendations included in it. Subsequently the Committee *adopts* the report, whether or not in amended form, after which it is sent to the Minister for the second time, who will then have to send it to both Houses of Parliament, together with his or her comments, within the (statutory) period of six weeks.

Because it turns out in practice that the Ministries or services involved use the maximum periods as minimum periods, this procedure often results in the Committee's reports reaching the two Houses of Parliament no earlier than about two and a half months after the Committee has completed its investigation. The Committee considers this delay undesirable and has brought this to the attention of the Ministers concerned several times. This has occasionally resulted in a report being handled more quickly.

Chapter 3

Investigative activities

The Committee exercises its supervisory task by carrying out so-called in-depth investigations and random checks, and by ‘monitoring’.

An in-depth investigation focuses on a complete investigative dossier or a specific activity of the AIVD or MIVD over a period set in advance by the Committee, in the context of which the activities performed by the services and special powers employed are assessed on legitimacy, thus, among other things, on necessity, proportionality and subsidiarity.

A random check is a brief investigation into one or more partial aspects of the activities of a service. The findings of a random check can result in initiating an in-depth investigation. If this is not the case, the Committee can inform the Minister by letter of its findings, conclusions and any recommendations. If the findings are of sufficient importance, the Committee may request the Minister to inform Parliament of the contents of the Committee’s letter.

In its early years the Committee regularly carried out random checks, but at the moment it makes little use of this instrument.

In-depth investigations and supervisory reports in the year under review

In the period from 1 April 2007 to 1 April 2008 the Ministers concerned presented seven supervisory reports drawn up by the Committee to the Lower House and Upper House. These reports contained the results of the investigations into (the legitimacy of) the following activities of the AIVD and MIVD, respectively:

- Report no. 11b on the implementation by the MIVD of the Security Investigations Act, presented on 11 May 2007;
- Report no. 12 on the Counter-Terrorism Infobox, presented on 10 April 2007;
- Report no. 13 on the exchange of information between the AIVD and the IND, presented on 21 May 2007; (the exchange of information between MIVD and IND, because of the limited intensity of their contact, has not resulted in a supervisory report, but in a letter to the Minister of Defence);
- Report no. 14 on the investigation of the AIVD into illegal intervention by foreign powers, presented on 26 June 2007;

- Report no. 15 on the activities of the MIVD in Iraq; this investigation was conducted in response to the accusation that acts of torture were carried out by staff of the MIVD in Iraq; presented on 18 June 2007;
- Report no. 16 on the cooperation of the AIVD with the Regional Intelligence Services and the Royal Netherlands Military Constabulary under Article 60 WIV 2002, presented on 30 January 2008;
- Report no. 17 on the assessment processes of the AIVD with respect to Mohammed B.; this investigation was conducted by the Committee at the request of the Lower House; the report was presented on 18 March 2008.

The (public) text of two of these supervisory reports is attached to this Annual Report as Appendix II. The website of the Committee contains the public text of all reports issued by the Committee (see for a list Appendix I).

Current investigations

Upon the completion of this Annual Report the Committee was involved in the following investigations:

- a. An investigation into the legitimacy aspects of the collaborative relationships the AIVD and MIVD, respectively, maintain with foreign services and with the services in the other countries of the Kingdom (Article 59 WIV 2002).
- b. An investigation into the exercise of certain special powers by the AIVD. This investigation focuses, in brief, on the power with respect to wiretapping (Art. 25 WIV 2002) and the power to select undirected intercepted telecommunication (Article 27 WIV 2002).

In its long-term investigations programme the Committee has also included investigations into the exercise of other special powers by the AIVD and MIVD.

- c. An investigation into the legitimacy of the investigations of the AIVD of an economic financial nature during a specific period.
- d. An investigation into several aspects of the functioning of the new Foreign Intelligence Directorate of the AIVD, which was set up because, under the WIV 2002, the service was assigned the task of conducting investigations in the interest of national security with regard to other countries concerning subjects designated by the Prime Minister in accordance with the other Ministers concerned in the so-called Designation Order (Article 6, paragraph 2, opening words and sub d WIV 2002). This task is also referred to as the foreign task of the AIVD.

- e. A second in-depth investigation into the official reports issued by the AIVD. This investigation focuses on the official reports from October 2005; it constitutes the follow-up to the supervisory report CTIVD no. 9a from 2006 in which the official reports of the AIVD over the period from January 2004 to October 2005 were examined and assessed.
- f. An investigation into the way in which and the extent to which the recommendations of the Committee, and the responses of the Ministers concerned to the recommendations, have resulted in adjustments of the procedures of the AIVD and the MIVD, respectively. See also page 11 and further. The Committee has meanwhile adopted these reports. The Minister of the Interior and Kingdom Relations, and the Minister of Defence will shortly present the reports to Parliament.

Structural monitoring

Several years ago the Committee decided to employ structural, periodic monitoring with respect to certain subjects and, if the results of the investigations give cause to this, to report on the results of the monitoring. In the course of the year under review, the category of subjects the Committee periodically monitors, has been expanded. The monitoring involves the following subjects with the two services:

a. Ministerial decisions regarding the use of special powers

This involves those special powers that may only be exercised with the permission of the Minister of the Interior and Kingdom Relations or the Minister of Defence. These include for example the power to intercept telecommunication (Article 25 WIV 2002) and the power to select undirected intercepted telecommunication (Article 27 WIV 2002). The in-depth investigation referred to above under b., is the result of this monitoring.

b. Requests for inspection of information processed by or for the services

Pursuant to Article 55, third paragraph, of the WIV 2002 the Committee is to be informed of any refusals on requests for inspection of information held by the services. The refusal of such requests can take place on the basis of certain grounds for refusal provided by law. Unless the decision entails a complete rejection, usually a request for refusal is granted partially, insofar as no information is provided that gives insight into the current knowledge level of the service. In principle this objection does not apply to information older than five years, unless there are other grounds for refusal, for example when the provision of the information would harm any vital interests of the state or the service's *modus operandi* or the personal privacy of others (see for an overview of possible grounds for refusal the Articles 53 and 55).

In order to fulfil its task as well as possible, the Committee has agreed with the services that the Committee will receive periodic overviews of any requests for inspection submitted and the decisions taken in respect of these requests. The Committee assesses these by means of random checks.

Based on the information it has received, the Committee has previously made recommendations to the AIVD, which handles the large majority of requests for inspection. The Committee has indicated that in some cases the current practice of the AIVD results in illegible dossiers for inspection, in which the summary information released is provided without a comprehensible context. The Committee takes the stance that openness is to be pursued, insofar as permitted by the interests of national security in the form of the protection of sources and secrecy of the *modus operandi*. It would be obvious to make a distinction between requests for inspection relating to information older than twenty years, and information of a more recent date. Information older than twenty years should, in the Committee's opinion, in principle be released unless serious grounds of national security dictate otherwise. An exception is information that falls under the protection of sources regarding informants, agents and (foreign) counterpart services, which the AIVD rightly considers as a serious ground for refusal. The latter on the condition that the ground for refusal 'protection of sources' is only reserved for the above categories.

Another recommendation the Committee has made is that with regard to decisions on requests for inspection the AIVD sees to a more comprehensible, and accessible, in short, a more community-minded phrasing. In the Committee's opinion the highly legal wording adopted by the AIVD resulted under certain conditions in a lack of clarity.

The Committee's observations have resulted in adoption by the AIVD of new internal guidelines for handling and settling such requests and in the AIVD now effecting a (relatively) more comprehensible and accessible phrasing.

The Committee points out that the above problem is also important for implementing the statutory notification obligation, which has been in force since mid-2007. See chapter 5 for more information on the statutory notification obligation.

c. Official reports

In 2006, the Committee issued supervisory reports on the official reports issued by the AIVD (in the period January 2004 to October 2005) and the MIVD (the period January 2004 to January 2006), respectively: CTIVD nos. 9a en 9b. Considering the increased use of official reports, in particular by the AIVD, in legal proceedings and the possible evidential value of official reports, the Committee has decided to regularly monitor the official reports of the AIVD and the MIVD.

Monitoring the official reports of the AIVD has resulted in two in-depth investigations into

the official reports of the AIVD; over the period as from October 2005. Monitoring the official reports of the MIVD over the period January 2006 to January 2008 has meanwhile been completed and has not shown any peculiarities. The Committee has informed the Director of the MIVD of this in writing.

d. Security clearance investigations

In the year under review, the Committee decided to also subject the security clearance investigations conducted by the AIVD and MIVD to structural periodic monitoring by means of random checks.

Recommendations of the Committee

In the period from its initiation (1 July 2003), the Committee has issued 21 supervisory reports on the AIVD and the MIVD. Ordinarily, the Committee includes several recommendations in its reports which arise from its findings and conclusions in the specific investigation, to which the report refers. The letter that the Minister concerned sends along with the Committee's report to the Lower House and the Upper House, contains a reaction to the recommendations.

The Committee considered it necessary to investigate precisely how the services have handled these promises of the Ministers and for this purpose has initiated an investigation. In this context the Committee focused on the first 13 supervisory reports (on the AIVD and the MIVD), because the Committee wishes to grant the services a reasonable period (of about a year) in which to implement the promises.

The supervisory reports on this investigation (no. 18a on the AIVD and no. 18b on the MIVD) will shortly be presented by the two Ministers to Parliament. For now the Committee will suffice with a concise description of its main findings.

It turns out that by far most of the recommendations of the Committee have been adopted by the two Ministers concerned and meanwhile (over the period investigated) have been implemented by the AIVD and the MIVD. For the most part, this took place by means of adjusting the internal rules within the services. This is of course important, but the Committee considers it even more important that the recommendations are implemented in practice and that this also receives the necessary attention internally. Within both services a system has been put in place that is to ensure that the recommendations of the Committee are given the necessary attention and that activities are conducted in accordance with these recommendations.

The Committee has greeted with approval several important adjustments within or with respect to the services that are (partially) based on recommendations of the Committee. For example, a joint proliferation team of the AIVD and the MIVD has been set up, the Designation Order of the Prime Minister for the foreign task has undergone a major

adjustment, there is more clarity on and supervision over several collaboration arrangements of the AIVD with a foreign service, important - restrictive - rules have been created within the AIVD as to the exercise of powers against holders of the right of non-disclosure, and the Committee's recommendations have resulted in several proposals to amend the WIV 2002. For a more detailed description of the recommendations of the Committee and the way in which these have been handled, the Committee refers to the supervisory reports on this subject to be issued shortly (nos. 18a and 18b).

Chapter 4

The handling of complaints

Any person who wishes to submit a complaint about any actions of the services⁴, must – before applying to the National Ombudsman – apply to the Minister responsible for the service concerned. In the handling of these complaints by the Minister, the Review Committee has an advisory role. Pursuant to Article 83, third paragraph, WIV 2002, the Minister must seek the advice of the Committee before rendering his judgment about the validity of the complaint. The Committee therefore acts as an external advisory body. Section 9.3 of the General Administrative Law Act is applicable to the advisory role of the Committee. In derogation of Article 9:13, second paragraph, General Administrative Law Act the Minister concerned, however, may not give any instructions to the Committee. This provision is a direct consequence of the independent nature of the Committee.

The consequence of involving the Committee as a complaints advisory committee is that the Committee will take over the entire investigation into the actions that are the subject of the complaint and the procedures followed, including the hearing of the complainant and staff members of the services involved. On the basis of written documents and a hearing of the complainant the Committee itself will determine the substance and scope of the complaint, on which it will render an advice. In so doing the Committee is not bound by the Minister's interpretation of the complaint or by his view that a specific part of the document in which the complainant has phrased his complaint should be disregarded in the Committee's advice. A different interpretation would be inconsistent with the provision of Article 83, third paragraph, of the WIV 2002, which provides among other things that the Minister cannot give any instructions to the Committee.

Procedure regarding the handling of complaints

On receiving a complaint on which it is to render an advice, the Committee will first inspect the (if at all) existing files with the intelligence and security services. Subsequently, the Committee will hear the complainant unless such a hearing is unnecessary because the complaint is evidently unfounded or the complainant has stated not to make use of the right to be heard (Article 9:15, third paragraph, General Administrative Law Act). As a rule,

⁴ Services in this context are understood to mean the relevant ministers (of the Interior and Kingdom Relations, Defence and General Affairs), the heads of the services (AIVD and MIVD), the coordinator, and the persons working for the services and coordinator (Article 83, first paragraph, of the WIV 2002).

hearing the complainant is not done by the full Committee but is assigned – in accordance with the provision of Article 9:15, second paragraph, General Administrative Law Act – by the Committee to its chair or a member. After hearing the complainant, the person who is the subject of the complaint is permitted to present his views regarding the complaint. In this context it is possible for the Committee to allow the parties to submit a reply and a rejoinder.

If for the sake of completeness of the investigation it is necessary to hear witnesses, the Committee can decide to do so. Incidentally, the Act does not permit hearing witnesses under oath in a complaints procedure. The article in question, Article 75, is part of section 6.2.1 of the Act, which contains general provisions pertaining to the supervision, whereas the complaints procedure is described in section 6.5 of the Act. An amendment of the Act would appear in order, because the National Ombudsman does have the power to hear witnesses under oath in cases of complaints against the services; it would be somewhat peculiar if the Committee did not have this power.

After inspection of the files and hearing the persons involved, the Committee will assess whether the actions of the service that are subject of the complaint, meet the requirement of having been carried out in the proper discharge of duties. In this context the Committee has a broader framework for assessment than it has with respect to its supervisory task, which is limited to the issues of legitimacy.⁵ The Committee, subsequently, will send a report of its findings accompanied by an advice and any recommendations to the Minister concerned (Article 9:15, General Administrative Law Act). The Minister may deviate from the Committee's advice, however, the Minister is then obliged to state his or her reasons for this deviation in the response to the complainant accompanied by the Committee's advice. Thus, in formulating its advice, the Committee has to take into account that the advice might be made public and therefore has to formulate the advice in such a way that its obligation to secrecy (Article 82 in conjunction with Article 15 WIV 2002) is not violated. This, inevitably, sometimes results in vague and abstract formulations in the Committee's advice.

Before involving the Committee for advice on the validity of the complaint, the Minister will first allow the service involved the opportunity to settle the complaint in an informal way. This is in accordance with the legislator's view, who felt that needless formalisation and bureaucracy are to be avoided.⁶ The Committee is also of the opinion that in principle the services are to be given the opportunity to informally settle the complaint themselves.

⁵ The legitimacy is an aspect of the decency standards that are assessed in the handling of complaints. Parliamentary Documents II 1997-1998, 25 837, B, p. 6.

⁶ See Parliamentary documents II 1997/98, 25 837, nr. 3, p. 7.

In its capacity as complaints advisory committee the Committee only has an advisory task in the meaning of Article 83, WIV 2002, if the Minister has received a formal complaint. However, not all formal complaints require the Committee's advice. If a complaint is inadmissible based on Article 9:4 General Administrative Law Act or if it is not taken into consideration based on the provisions of Article 9:8 General Administrative Law Act, then the advice of the Review Committee is not required. Only in so far as the assessment of the validity of the complaint requires a substantive assessment, is it necessary to call in the Review Committee. In other words: if the Minister refrains from giving a decision on an action, then the Committee does not have to advise. Manifestly unfounded complaints on the other hand are not excluded from the obligation to handle all complaints.⁷ The Committee should, however, in principle advise on such complaints. Article 9:10 of the General Administrative Law Act however releases the Committee in such cases from the obligation to hear the complainant (as is also the case if the complainant has stated not to use his right to be heard).⁸

Complaints handled

In the year under review, a complaint about the AIVD was submitted to the Committee that concerned a follow-up on a previous complaint about the AIVD formulated by the same complainant, on which the Committee had already given an advice. While the complaint was pending before the Committee the complainant withdrew the complaint.

With respect to a second complaint against the AIVD the Committee has advised the Minister of the Interior and Kingdom Relations to dismiss the complaint.

One complainant has submitted his complaint about the AIVD addressed to the Minister of the Interior and Kingdom Relations to the Committee, together with the response he received on his complaint from the Minister. In her response, the Minister dismissed the complaint and refused to submit the complaint to the Committee for advice. However, it was quite clear from the Minister's letter that she had taken the complaint into consideration. Therefore she was obliged by law to request the advice of the Committee. The Committee has alerted the Minister to this omission in writing and expressed its expectation that the complaint will be submitted to the Committee as yet. Upon the completion of this Annual Report the Minister's response has not yet been received.

One complainant formulated several complaints about the MIVD in the year under review. The Committee has issued an advice twice in this context. Several items of complaint no

⁷ Contrary to the National Ombudsman (compare art. 9:23 opening words and sub b General Administrative Law Act) under the regime of the General Administrative Law Act the Minister is obliged to handle manifestly unfounded complaints.

⁸ Parliamentary Documents II 1997-1998, 25 837, B, p. 4.

longer had to be handled, because they were withdrawn or because the ground for the item of complaint no longer applied. With respect to the remaining items of complaint the Committee advised the Minister of Defence to dismiss these, except for one item with respect to which the Committee advised the Minister to declare this partially justified. The Minister has adopted the Committee's advice, with the exception of the advice to declare the item of complaint partially justified. The Minister has sent the Committee's advice to the complainant in accordance with Article 9:16 General Administrative Law Act.

Chapter 5

Other activities

The notification obligation

The notification obligation, as laid down in Article 34 of the Act, came into effect in the year under review, on 29 May 2007. This notification obligation, briefly put, entails that the person involved will be informed of certain special powers, as further defined in section 3.2.2. of the Act, that have been exercised in respect of him or her, five years after the exercise of the power in question has been terminated. If such notification is not possible, thus in case of cancellation of the notification, the Review Committee shall be informed of this, together with a statement of reasons (Article 34, paragraph 2). Meanwhile the AIVD has informed the Committee of the first decisions to cancel notification. The Committee has examined these decisions and will send its conclusions to the executive level of the AIVD. The supervisory task of the Committee has been substantially expanded as a result of the notification obligation coming into effect in mid-2007.

For the sake of completeness it is pointed out here that the Committee, based on its general task to supervise the legitimacy of the activities of the services, can evidently also examine the other cases in which a service makes a decision regarding notification, for instance should the service decide to postpone notification.

Several times the Committee and the AIVD have exchanged their views with regard to the effects of several aspects of the statutory notification obligation. On a number of points this exchange of views has led to identical interpretations. It is expected that the MIVD will adopt these interpretations.

In the next year under review, the Committee will discuss the implementation of the notification obligation in practice in more detail.

International symposium

In 2005, the Committee was requested by the international network the Committee has built up, to organise an international symposium on various aspects of the supervision on intelligence and security services. The Committee willingly carried out this request. It decided to set up the symposium around the subject of the activities of intelligence and security services in conjunction with the supervision over these activities, all this placed within the context of human rights.

On 7 and 8 June 2007, an extensive international symposium took place in the Knights' Hall in The Hague on the subject: "Accountability of intelligence and security agencies and

Human Rights.” The Prime Minister, the European Commissioner for Justice, Freedom and Security, Mr Frattini, and numerous experts from the Netherlands and abroad spoke at the symposium. In preparation of the symposium the Committee received the support of Prof Y. Buruma of the Radboud University in Nijmegen, who also accounted for the conclusions. Some 200 participants from 9 countries debated intensively with the speakers and with one another. The texts of the addresses and discussions have been bundled; several copies of the bundle are still available with the Committee. The texts have also been published on the website of the Committee.

Study session

As a result of an interesting legal issue the Committee encountered in the course of its investigations, the Committee organised a (closed) study session on the subject: “Intelligence activities in foreign countries” in The Hague in October 2007. Some 60 participants were involved. The report of this study session is available on the website of the Committee.

International contacts

After its institution the Review Committee has always sought contact with foreign institutions and organisations entrusted with similar duties. The exchange of experiences and insights and the comparison of powers, duties and responsibilities and of procedures can have a very inspiring and stimulating effect.

Conference in Pisa

On 6 and 7 September 2007, the secretary and one of the researchers of the Committee took part in an international conference of the European Consortium for Political Research (ECPR) in Pisa. This conference had an academic perspective, but there were also persons active in the field among the participants. One of the topics of the conference was ‘Intelligence governance’. Different aspects of the work of the intelligence and security services were discussed within this topic, including the supervision over the services. There were extensive debates about the field of activity and the implementation of tasks of the intelligence and security services, which subject is receiving increasing interest from the academic world. The representatives of the Committee presented a paper about the Dutch supervisory system for the panel regarding the ‘Western approaches to intelligence accountability’.

Visit to Prague

In October 2007, the Committee paid a visit of several days to Prague. There it spoke with the head and several other representatives of one of the Czech services and with a large number of Czech members of parliament. There was much interest in the information of the Committee, as there is a discussion going on about the most advisable form of supervision on the Czech intelligence and security services in the parliament in Prague.

Visit to Brussels

In January 2008, the secretary and the researchers of the Committee paid a two-day visit to several European institutions in Brussels. They visited the headquarters of the Council of the EU (Justus Lipsius), where among other things the meetings of the Justice and Home Affairs Council, consisting of the Ministers of Justice and/or Home Affairs of the member states, and the meetings of the Comité des Représentants Permanents (Coreper) are held. The Coreper, as permanent representations of the member states, has, among other things, the task to prepare the activities of the Council of the EU and to negotiate with the European Commission on new European legislation. They also visited the Joint Situation Centre (SITCEN), a subdivision of the EU Council secretariat, which, among other things, makes joint analyses regarding terrorism, and they visited the Permanent Representation of the Netherlands to the EU, where they talked about the role of the EU with respect to the intelligence and security services.

Lastly, they visited the Belgian Committee that supervises the Belgian services, the *Vast Comité van Toezicht op de Inlichtingen- en Veiligheidsdiensten (Vast Comité I)* (Belgian Permanent Committee for the Control of Intelligence Services). They exchanged ideas with the clerk and several staff members of the *Vast Comité I* regarding the supervision over the services as it takes shape in the Dutch and Belgian situations.

Visit of a Polish delegation

In February 2008, the secretary and a couple of researchers of the Committee received an official of the staff of the Prime Minister of Poland, who is occupied with the Polish intelligence and security services. He was accompanied by a staff member of the Polish embassy in the Netherlands. They spoke about the Dutch supervisory system of the intelligence and security services, as well as about the intentions that exist in Poland to change the Polish supervisory system.

Chapter 6

Legislative matters

It is with great interest that the Committee follows the various amendments of the WIV 2002 and the Security Investigations Act, which are under preparation. Although not mentioned in the WIV 2002 in so many words, gradually the practice has grown to place legislative proposals, which are in the area of expertise of the Committee, before the Committee for advice at an early stage. The Committee always complies with these requests for advice, because it considers it its duty to also assist legislation with its experience and insight.

Below follows a concise overview of the amendments realised and pending legislative proposals during the year under review, as well as legislative desiderata insofar as relevant to the Committee's tasks.

Post-Madrid measures

The most prominent amendment to the Committee concerns the legislative proposal regarding the so-called post-Madrid measures, presented to the Lower House on 9 May 2006.⁹ Underlying this proposal for amendment of the WIV 2002 is the wish to promote more effective and efficient procedures of the services, among other things in light of the observations made at the time by the Administrative Evaluation Committee AIVD (Havermans Committee).¹⁰ The proposal owes its name to the supplementation and prioritising which took place as a result of the attacks in Madrid on 11 March 2004.

A central part of the proposed amendment is the obligatory provision of information by administrative bodies as well as persons and authorities who operate professionally in the financial sector or transport sector. While in the present situation the provision of information to the services takes place mainly on a voluntary basis, by governmental decree administrative bodies and organisations in the financial sector and transport sector may be designated which are subsequently obliged to provide information. Also the above administrative bodies and organisations may be obliged to provide (parts of) automated

⁹ In full: the amendment of the WIV 2002 in connection with the improvement of the possibilities of the intelligence and security services to investigate and take measures against terrorist and other dangers with regard to national security as well as several other amendments. Parliamentary Documents can be found under serial number 30 553.

¹⁰ Parliamentary Documents II 2003/04, 29 200 VII, no. 61, p. 3-4.

data files for data analysis, which is introduced as a new special power. The new concept of data analysis has been included in the legislative proposal in a separate Article in the chapter on data processing. This collective term concerns, among other things, the searching of data on the basis of profiles or comparing data in order to find patterns. Also on account of the increased technical possibilities in this area, this form of data processing will now be explicitly provided for by law. Also in respect of another subject, namely (internet) communication, the already existing provisions in the law will be adjusted to recent technological developments in order to allow that the obligation to cooperate can also be imposed on the providers of these services.

Other parts of the proposed amendment concern several adjustments to the special powers to set up and use legal entities and to promote or take measures. Lastly, it is proposed to reduce the appointment procedure for the members of the Committee by designating the recommendation list drawn up by the vice president of the Council of State, the president of the Supreme Court of the Netherlands and the National Ombudsman by operation of law as a recommendation to the government after this has been open for inspection by the Lower House during a period of six weeks, unless the Recommendation Committee is asked by or on behalf of the Lower House to present a new recommendation list per vacancy within this period.

The legislative proposal was accepted by the Lower House on 16 October 2007. At the time of writing this annual report, the legislative proposal was pending in the Upper House. On 7 November 2007 the Upper House requested advice from the Data Protection Authority (CBP) regarding the legislative proposal. The CBP complied with this request by sending an advice regarding this legislative proposal to the Upper Chamber on 20 December 2007.¹¹

For the sake of completeness the Committee observes that the legislator *exclusively* commissions the supervision over data processing by and for the benefit of the AIVD and MIVD to the Committee. The introduction to Article 2 and under b. of the Data Protection Act state that this Act is not applicable to the processing of personal information by or for the benefit of the intelligence and security services of the WIV 2002.

In the context of a discussion with the Data Protection Authority on the supervision of the CT Infobox this was explicitly confirmed by the Minister of the Interior and Kingdom Relations in his letter to the Lower House of 26 September 2005. See report no. 12.

¹¹ Parliamentary Documents I 2007/08, 30553, B and supplement.

Amendment Security Investigations Act

On 19 December 2007 an amendment of the Security Investigations Act (WVO) came into effect.¹² In addition to the adjustments of the Act in connection with an investigation into the practicability of the Security Investigations Act¹³ this proposal also contains a recommendation from the Oord Committee on boosting the security investigations for civil aviation.¹⁴ The intention of the latter is to make it possible for the AIVD to systematically retrieve judicial information and information for prosecution purposes as well as information from police registers in order to see whether an intermediate, renewed security investigation into the person involved is to be performed. For the remainder, the proposal contains several amendments for specifying or clarifying the Act.

Legislative proposal Administrative Measures National Security

In the year under review, the AIVD and the MIVD were referred to not only in the parliamentary discussions on the above proposals to amend the WIV 2002 and the Security Investigations Act, but also in the course of another legislative amendment trajectory, namely the proposal of the Administrative Measures National Security Act.¹⁵ This legislative proposal creates a legal foundation to take preventative administrative measures for the sake of national security, such as an area restricting ban. The proposal is still pending in the Upper House at the completion of this Annual Report.

General governmental decree in accordance with Article 21 paragraph 7 of the WIV 2002

Under certain conditions agents of the AIVD and the MIVD are permitted to commit criminal offences or co-perpetrate under instruction and responsibility of the services (Article 21, paragraph 3, of the WIV 2002).¹⁶ The Committee has repeatedly urged, in accordance with the provisions laid down in Article 21, paragraph 7, of the WIV 2002, to set further rules via or pursuant to a governmental decree (AMvB), for agents of the services committing or co-perpetrating criminal offences. For example, such a governmental decree could formalize the role played by the representative of the Public

¹² Act of 11 October 2007, Bulletin of Acts and Decrees 2007, 508.

¹³ Parliamentary Documents II 2004/05, 29 843, no. 1.

¹⁴ See the letter of the Minister of Justice, also on behalf of the Minister of Defense and the Minister of the Interior and Kingdom Relations, of 1 July 2005 on the Security policy civil aviation. Parliamentary Documents II 2004/05, 24 804, no. 30, p. 3.

¹⁵ Parliamentary Documents can be found under serial number 30 566.

¹⁶ See for more information on this subject for example the supervisory report on a counter-terrorism operation of the AIVD (CTIVD no. 7), which can be found on www.ctivd.nl.

Prosecution Service with respect to the AIVD and the MIVD (the National Public Prosecutor for Counter-terrorism; LOvJ) in this context. The Committee considers it important that this official is closely involved in (giving) the instruction to commit criminal offences by an agent of the AIVD or MIVD.

In his response to the supervisory report on a counter-terrorism operation of the AIVD of 29 March 2006 the Minister of the Interior and Kingdom Relations stated that a governmental decree under Article 21, paragraph 7, WIV 2002 is in the process of being drawn up in accordance with the Committee's recommendation.¹⁷ The Minister stated in this context that granting permission to commit criminal offences is a power of the AIVD and that whether or not to involve the Public Prosecution Service should be at the discretion of the AIVD. The WIV 2002 does not give the National Public Prosecutor for Counter-terrorism any powers or responsibility in this context, according to the Minister. The Committee has established that there has been a serious delay in drawing up the governmental decree, as a result of which the position of the National Public Prosecutor for Counter-terrorism - who in practice is usually approached by the teams of the AIVD when they intend to have an agent commit or co-perpetrate a criminal offence - has still not been formalised. Drawing up the governmental decree is, however, also important in connection with several other subjects, for example with respect to the conditions under which criminal offences may be committed. At the moment there are few rules in this context, whereas this is a subject which can involve major legal issues.

For this reason the Committee is still of the opinion that drawing up the governmental decree under Article 21, paragraph 7, WIV 2002 is an urgent matter.

Advice to amend Article 60 WIV 2002

On 1 February 2008, the Minister of Defence presented the Lower House a letter of the Committee on the cooperation between the MIVD and the Royal Netherlands Military Constabulary (Kmar).¹⁸ This took place at the request of the Committee, in accordance with Article 64, paragraph 2, under b, WIV 2002. In the letter the Committee, among other things, made the recommendation to adjust Article 60 WIV 2002 in the sense that the Kmar is given the power to perform activities in the military field (in a direct way) for the MIVD. Under Article 60 WIV 2002 the Kmar is permitted, under the responsibility of the Minister of the Interior and Kingdom Relations and in accordance with the instructions of the head of the AIVD, to carry out activities for the AIVD. At the moment, the Kmar is not permitted to carry out activities directly for the MIVD. In the opinion of the Committee this is strange, because the Kmar, like the MIVD, comes under the Ministry of Defence and carries

¹⁷ Parliamentary Documents II 2005/06, 29 924, no. 10.

¹⁸ Parliamentary Documents II 2007/08, 30 070, no. 8.

out activities both in the military and in the civil field. In the system of the WIV 2002 the MIVD can be considered to have a leading role in intelligence activities in the military field. Therefore, in the opinion of the Committee a relationship based on Article 60 between the MIVD and the Kmar would be within the system of the Act. The Committee is of the opinion that, when a matter is involved that has defence relevance only and that does not have a link with the civil field, it cannot be understood why the AIVD – by means of its power to call in the Kmar – should be involved in the MIVD calling in the Kmar. The MIVD feels the need to be able to call in the Kmar directly – thus without the intervention of the AIVD.

Moreover, according to the Committee an amendment of Article 60 WIV 2002 would be in line with the proposed amendment of Article 63 WIV 2002. The latter amendment intends to make it possible for the MIVD to call in the Kmar for technical support. The Committee expects that in practice it will be complicated to fully comply with the division between providing technical support (the new Article 63 WIV 2002) and actually carrying out activities by the Kmar for the MIVD and under the direction of the MIVD – for which Article 60 WIV 2002 at the moment does not offer a possibility. An amendment of Article 60 WIV 2002 could resolve this problem.

In his response the Minister of Defence stated that he will consult on this recommendation with the Minister of the Interior and Kingdom Relations.

Amendment of the WIV 2002 in connection with the CT Infobox

On 10 April 2007, the Minister of the Interior and Kingdom Relations presented the supervisory report of the Committee on the Counter-Terrorism (CT) Infobox to the Lower House.¹⁹ In this supervisory report the Committee recommended, among other things, to provide for an explicit statutory basis for the CT Infobox, in which context including the CT Infobox in the WIV 2002 in the opinion of the Committee would be the most logical course. In this new statutory arrangement more emphasis should be placed on the fact that the CT Infobox involves a collaborative arrangement between equal partners. The role and position of the participating organisations (or the Ministers responsible) and the Coordinating Consultation Body, created especially for the CT Infobox, should be laid down and clarified. Also the role of the National Coordinator for Counter-terrorism within the Coordinating Consultation Body requires clarification. The Committee recommends giving this role a statutory basis. In addition, the Committee considers it desirable to provide for a simpler advisory procedure.

In the letter accompanying the supervisory report the Minister of the Interior and Kingdom Relations stated to be very willing to follow the Committee in this.

¹⁹ Parliamentary Documents II 2006/07, 29 924, no. 16.

At the moment the ministries in question are involved in the preparations for this amendment of the WIV 2002.

Final observation

The Committee is pleased to find that its reports have achieved a permanent place in the polity of the Netherlands, and receive attention in many circles. In this way the Committee's investigations and supervisory reports contribute substantially to the necessary control exerted by parliament, the press and the public over the intelligence and security services, as well as to the internal control over the services.

In this year under review the Committee once again, as in previous years, received the full cooperation of the AIVD and MIVD.

APPENDIX I

LIST OF REPORTS CTIVD

Supervisory report on the investigation of the MIVD into incidents that may harm Defence (CTIVD no. 1, 2004)

Supervisory report on the AIVD investigation into radicalisation processes within the Islamic community (CTIVD no. 2, 2004)

Supervisory report on a counter-terrorism operation by the MIVD (CTIVD no. 3, 2004)

Supervisory report on the AIVD investigation into the developments within the Moluccan community in the Netherlands (CTIVD no. 4, 2005)

Supervisory report on the MIVD investigation into proliferation of weapons of mass destruction and their means of delivery (CTIVD no. 5a, 2005)

Supervisory report on the AIVD investigation into proliferation of weapons of mass destruction and their means of delivery (CTIVD no. 5b, 2005)

Supervisory report on the AIVD investigation into radical animal rights activism and left-wing extremism (CTIVD no. 6, 2006)

Supervisory report on the execution of a counter-terrorism operation of the AIVD (CTIVD no. 7, 2006)

Supervisory report on the deployment by the MIVD of informants and agents, more in particular abroad (CTIVD no. 8a, 2006)

Supervisory report on the deployment by the AIVD of informants and agents, more in particular abroad (CTIVD no. 8b, 2006)

Supervisory report on the official reports issued by the AIVD in the period from January 2004 to October 2005 (CTIVD no. 9a, 2006)

Supervisory report on the official reports issued by the MIVD in the period from January 2004 to January 2006 (CTIVD no. 9b, 2006)

Supervisory report on the investigation by the AIVD into the leaking of state secrets (CTIVD no. 10, 2006)

Supervisory report on the implementation of the Security Investigations Act by the MIVD (CTIVD no. 11a, 2007)

Supervisory report on the implementation of the Security Investigations Act by the AIVD (CTIVD no. 11b, 2007)

Supervisory report on the Counter-Terrorism Infobox (CTIVD no. 12, 2007)

Supervisory report on the exchange of information between the AIVD and the Immigration and Nationalisation Service (IND) (CTIVD no. 13, 2007)

Supervisory report on the investigation of the AIVD into illegal interference by foreign powers (including espionage) (CTIVD no. 14, 2007)

Supervisory report on the activities of MIVD staff in Iraq in interrogating prisoners (CTIVD no. 15, 2007)

Supervisory report on the cooperation between the AIVD and the Regional Intelligence Services and the Royal Netherlands Military Constabulary, respectively (CTIVD no. 16, 2008)

Supervisory report on the assessment processes of the AIVD with respect to Mohammed B. (CTIVD no. 17, 2008)

APPENDIX II

TWO SUPERVISORY REPORTS ISSUED IN THE YEAR UNDER REVIEW

Supervisory report no. 12

On the Counter-Terrorism Infobox

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Summary

The Counter-terrorism Infobox (CT Infobox) is a recently instituted collaborative partnership between various organisations and services. Within the CT Infobox information is collected with the purpose of combating (Islamist) terrorism and/or radicalism.

To give the CT Infobox a sound legal basis, it was necessary to have it fall under the scope of the Intelligence and Security Services Act 2002 (WIV 2002) and the AIVD. However, this arrangement turned out not to be without difficulty. In the opinion of the Review Committee on the Intelligence and Security Services (the Committee) the AIVD took up too much of a leading position within the collaborative partnership in the initial stages of the CT Infobox. This was not conducive to an optimal cooperation between the AIVD and the other organisations in the CT Infobox.

The Committee recommends formulating further statutory provisions for the CT Infobox. These should place more emphasis on the collaborative partnership the CT Infobox is intended to be. These provisions should also include a more simple procedure for providing information (in the form of advice).

In the statutory provisions to be drawn up the Coordinating Consultation Body that has been placed above the CT Infobox, should be given a statutory basis clearly describing its tasks. The position of the National Coordinator for Counter-terrorism (NCTb) within the Coordinating Consultation Body also requires clarification.

The Committee is of the opinion that not all persons included in the CT Infobox meet the requirements laid down in the WIV 2002 for including a person. The Committee recommends as far as including a person in the system is concerned to strictly examine the added value of inclusion in the CT Infobox and to describe this added value. This could prevent persons from being nominated for inclusion in the CT Infobox on insufficient grounds.

One type of advice the CT Infobox issues, is advice to the NCTb on the person-specific approach ('disrupting'). The Committee has doubts, in the light of Article 8 ECHR and the corresponding case law of the European Court of Human Rights, whether Article 2 of the Police Act 1993 offers a sufficient statutory basis on which the person-specific approach can be based. The Committee also has doubts with respect to the present procedure that has been created for applying this means.

If the government and parliament are of the opinion that the person-specific approach

should be possible, in the Committee's opinion it is necessary to create explicit further statutory provisions in this context. This will involve clearly thinking through the responsibilities of the various organisations involved in using this means.

The Committee is of the opinion that the CT Infobox could in reasonableness arrive at the advice it has rendered.

See section 10 of the supervisory report for the conclusions and recommendations in more detail.

Supervisory Report

1 Introduction

The present report contains the findings of the Review Committee on the Intelligence and Security Services (hereinafter referred to as: the Committee) from its investigation into the Counter-terrorism (CT) Infobox. The investigation was announced by letter of 9 January 2006, in accordance with Article 78 paragraph 3 of the Intelligence and Security Services Act 2002 (hereinafter referred to as: WIV 2002), to the Minister of the Interior and Kingdom Relations and to the chairpersons of the Upper House and Lower House of Parliament.

The Committee is aware that the CT Infobox is an organisation that is still in the making. Within the CT Infobox efforts are being made to find a suitable way of cooperation and legal embedding in this context. Despite this, the Committee, in response to questions within parliament and society at large about the form of cooperation in the CT Infobox and the nature and possibilities of the CT Infobox, has decided to institute this investigation. The Committee observes some concern that within the CT Infobox an unrestrained exchange of information is involved between the participating services. There are also concerns that the CT Infobox is abused in the sense that difficult cases are ‘dropped off’ in order to create some sort of shared responsibility for tackling these cases, and concerns that the CT Infobox is extended too far beyond its original purpose, thus becoming uncontrollable and unworkable.

In 2005 the question that came up was: which organisation controls the CT Infobox. In his letter to the Lower House of 18 March 2005²⁰ the Minister of the Interior and Kingdom Relations stated that the CT Infobox - considering the fact that the CT Infobox falls under the scope of the WIV 2002 - falls within the independent supervision of the Review Committee.

In response to observations made by the Data Protection Authority (CBP) about the CT Infobox the Minister did not see any reason to further explain the supervision of the CT Infobox in more detail in his letter of 26 September 2005 to the Lower House²¹. In this letter, the Minister stated that the supervision over the CT Infobox - including the

²⁰ Parliamentary Documents II 2004/05, 29 754 and 27 925, no. 21.

²¹ Parliamentary Documents II 2005/06, 29 754, no. 29.

processing of information that takes place in the context of the CT Infobox – is exercised *exclusively* by the Review Committee.

The Committee is also competent to act with a view to the supervision over the provision of information to the CT Infobox by the participating services. This provision of information is based on the Articles 17, 61 and 62 WIV 2002 and can consequently be considered as data processing by the AIVD, in respect of which the Committee as supervisory body has competence, according to the Minister.

For the investigation the Committee conducted interviews with the responsible Director of the AIVD, the head of the team of the AIVD in the CT Infobox and his predecessor, the team leader of the National Police Services Agency (KLPD) in the CT Infobox, the representatives of almost all participating services in the Coordinating Consultation Body²², a representative of the Immigration and Naturalisation Service (IND), two representatives of the National Coordinator for Counter-terrorism (NCTb), the two National Public Prosecutors for Counter-terrorism (LOVJ), two representatives of the Fiscal Intelligence and Investigation Service- Economic Surveillance Department (FIOD-ECD) and staff members of the AIVD's legal department. The Committee also interviewed several staff members of the CT Infobox itself.

The Committee was given full access to the automated system of the CT Infobox for its investigation, the system developed by the AIVD for the CT Infobox. In this system, the entire processing of information of the CT Infobox takes place. This has allowed the Committee to perform a full file investigation into the CT Infobox.

In this report the Committee will give an overview of the current state of affairs with regard to the CT Infobox (section 2-5). In addition, the legal embedding will be discussed as well as the questions arising in this context (section 6).

In section 7 the Committee will set out its findings based on its file investigation, inter alia with regard to the persons included in the CT Infobox and the advice provided.

The Committee will subsequently discuss a number of issues relating to the CT Infobox (section 8) and elaborate on several (possible) future developments of the CT Infobox (section 9).

The Committee concludes the report with its conclusions and recommendations (section 10).

²² Namely representatives of the AIVD, the National Police Services Agency, the MIVD and the Public Prosecution Service.

2 Description of the CT Infobox

2.1 General

The CT Infobox is a special collaborative partnership between a number of organisations, the purpose of which is to render a contribution to counter-terrorism and the combat of radicalism. The method employed by the CT Infobox is to collect and compare information of the participating services about networks and persons involved in terrorism and radicalism.²³

The task of the CT Infobox is first to combat the current threat of Islamist terrorism, but its task is not confined to this. Also other forms of terrorism and radicalism can be dealt with in the CT Infobox. Apart from one or two exceptions, this is currently not at issue.

The CT Infobox concerns a continued, intensified collaboration such as was created in the so-called Analytical Cell following the attacks in Madrid of March 2004. At the time, the National Police Services Agency, the AIVD and the Public Prosecution Service took part in this collaborative partnership, which was accommodated with the National Police Services Agency. Effectively, the CT Infobox, as a result of the covenant of the Analytical Cell²⁴ being withdrawn, replaced this Analytical Cell.

In addition to the three organisations already collaborating in the Analytical Cell, the IND and the MIVD are also part of the CT Infobox, while recently the FIOD-ECD joined the CT Infobox as a participant. In chapter 3 the Committee will enter into the different positions of these services with regard to the CT Infobox.

The CT Infobox is located at the office of the AIVD. The AIVD has made a separate space available for this in which the staff of the CT Infobox carries out its activities. This space and the automated system developed for the CT Infobox are not accessible to the participating organisations.

Staff members of the CT Infobox look for relevant information in the available systems about the persons included in the CT Infobox and they play a role in assessing the information. The information collected by the staff members of the CT Infobox will not leave the CT Infobox. The CT Infobox only renders advice after analysis of this information. Therefore, no information is exchanged directly between the participating services within the CT Infobox.

As to staff, the AIVD (approx. 12 fte) and the National Police Services Agency (approx. 10 fte) are the largest contributors to the CT Infobox.

²³ See clause 3 of the covenant of the CT Infobox.

²⁴ See clause 11 of the covenant of the CT Infobox.

Bringing together at a central point all relevant information available at the participating services about a certain individual allows for a quicker analysis and assessment of the available information from different angles. This way the CT Infobox is able to give well-considered advice about the most appropriate approach with respect to a specific individual. The added value of the CT Infobox is found both in the bundling of information and in the bundling of expertise contributed by each of the participating services. This way the CT Infobox has two key functions: reference and analysis.

The CT Infobox is to be regarded as a supplement to the already existing collaborative partnerships between the various services.

It emerged that the picture that people have of the CT Infobox is often incorrect. Unlike many believe, the CT Infobox is not an entity in which individuals are constantly monitored and kept under surveillance. Nor does the CT Infobox coordinate any actions to fight terrorism and/or radicalism. The CT Infobox's main task is to collect and analyse information that is already available and to advise on the best approach with respect to an individual. The CT Infobox can also draw the attention of one of the participating services to the fact that this service has information that may be important for one of the other participating services (see also section 5).

2.2 The covenant

On 11 March 2005 the then participating services signed a covenant on the mutual cooperation in the CT Infobox. This covenant constituted the basis for the CT Infobox.²⁵ Before signing the covenant, the Committee - at the request of the Minister of the Interior and Kingdom Relations - issued an advice to the AIVD on the draft-covenant. The advice concerned the question whether the draft-covenant was in accordance with the WIV 2002. Following the Committee's advice, the draft-covenant was adjusted on some points.

The covenant and the accompanying letter from the Minister of the Interior and Kingdom Relations made it clear that the CT Infobox is (from a legal point of view) accommodated with the AIVD and that the CT Infobox falls under the regime of the WIV 2002. This also makes clear that this Minister is responsible for the CT Infobox.²⁶

The task of the CT Infobox under the covenant is to advise on the desirability - based on consultation, comparative study and analysis of data provided by the services - of the provision of data by these services to other participating services or third parties. In line

²⁵ See the appendix to the letter of the Minister of the Interior and Kingdom Relations to the Lower House of Parliament of 18 March 2005; Parliamentary Documents II 2004/05, 29 754 and 27 925, no. 21.

²⁶ For the role of the Ministers of Defence and Justice see however section 3.4 and 3.6.

with this, the CT Infobox may produce an operational analysis and give advice on operational policy.²⁷

It has explicitly been provided that in carrying out their activities, staff members of the CT Infobox are not permitted to exercise any powers to investigate criminal offences or any special powers under the WIV 2002.²⁸ This provision makes it clear that the CT Infobox does not undertake any operational activities and that - also in line with this - the separation between investigation and intelligence work remains intact.

2.3 The Coordinating Consultation Body

A Coordinating Consultation Body has been set up for the coordination of the CT Infobox, in which representatives of (in principle) all participating services participate. The National Coordinator for Counter-terrorism is also represented in the Coordinating Consultation Body. In his letter on the CT Infobox of 18 March 2005, the Minister of the Interior and Kingdom Relations already announced the institution of this Consultation Body.²⁹ The Coordinating Consultation Body has met on a monthly basis since April 2005.

The Consultation Body is made up of representatives of the participating services at management level, as well as managerial level staff in the CT Infobox from the AIVD and the National Police Services Agency, and a representative of the National Coordinator for Counter-terrorism. The Coordinating Consultation Body is presided over by the Director involved of the AIVD. The Consultation Body consults among other things on the follow-up of the advice given, the coordination of current affairs, and control issues regarding the CT Infobox. Several other subjects are also discussed in this Consultation Body, such as a possible expansion of participants and tasks of the CT Infobox.

When the CT Infobox does not reach an agreement on any advice to be given, the matter is discussed in the Coordinating Consultation Body (the so-called escalation model). However, this rarely occurs.

²⁷ See clause 4 of the covenant of the CT Infobox.

²⁸ Clause 6 of the covenant of the CT Infobox.

²⁹ See Parliamentary Documents II 2004/05, 29 754 and 27 925, no. 21, p. 3.

3 Organisations involved in the CT Infobox

3.1 Introduction

Upon its institution, the CT Infobox had five members: the AIVD, the National Police Services Agency, the MIVD, the Immigration and Naturalisation Service and the Public Prosecution Service. By signing the covenant, these parties became a participant in the CT Infobox. A representative of each of these organisations participates in the Coordinating Consultation Body of the CT Infobox.

In the past period, the FIOD-ECD took part in the CT Infobox by way of a pilot. The FIOD-ECD has meanwhile become a participant in the CT Infobox; the sixth participating organisation. The basis for this admission is clause 10 of the covenant, which states that other parties may accede to the covenant with the approval of the other members.

Each organisation involved in the CT Infobox has its own position in it. This has especially been pointed out for the Public Prosecution Service. In his letter to the Lower House of 26 September 2005³⁰ the Minister of the Interior and Kingdom Relations wrote that the Public Prosecution Service 'does not sit on the CT Infobox, but does attend it'. In section 3.6 the Committee will discuss this in more detail.

Article 60 WIV 2002 provides the statutory context within which the National Police Services Agency and the FIOD-ECD act within the CT Infobox. The Immigration and Naturalisation Service will probably also be included in this Article shortly.³¹ The activities performed under the scope of Article 60 WIV 2002 take place on behalf of the AIVD, whereby the AIVD (and in line with this the Minister of the Interior and Kingdom Relations) bears full responsibility.

Pursuant to Article 60, paragraph 2, WIV 2002 staff members of said services must be designated who will take upon them the actual execution of these tasks. The staff members of these services in the CT Infobox are such 'Article 60 officials'. They fall under the responsibility of (the team head of) the AIVD.

The last service involved is the National Coordinator for Counter-terrorism. This body is not a participant of the CT Infobox and has not signed the covenant, either, but does take part in the Coordinating Consultation Body of the CT Infobox.

It should be observed that currently participation of the Royal Netherlands Military Constabulary to the CT Infobox is being considered.

³⁰ Parliamentary Documents II 2005/06, 29 754, no. 29, p. 4.

³¹ This is part of the so-called Post-Madrid measures: Parliamentary Document number 30 553.

In the next sections the Committee will render a detailed description of the (statutory) position of the various organisations. In chapter 6 the Committee will go more deeply into several questions issues involved in these positions.

3.2 Position of the AIVD

In his letter to the Lower House of 26 September 2005 the Minister of the Interior and Kingdom Relations explained the legal embedding of the CT Infobox and the leading position of the AIVD in it. It was explained in this letter and in the covenant that, from an organisational perspective, the CT Infobox falls under the AIVD. Thus the CT Infobox constitutes part of the AIVD. All activities of the CT Infobox fall within the scope of the WIV 2002.

The AIVD provides both information and persons to be included in the CT Infobox.

For the daily management of the CT Infobox the AIVD has appointed a team head, who also takes part in the Coordinating Consultation Body. The Director of the Democratic Legal Order Directorate (D1) of the AIVD participates in the Coordinating Consultation Body and also acts as its chairperson.

Several of the participating organisations found that partly as a result of the legal embedding of the CT Infobox, the AIVD in the early stages of the CT Infobox, assumed a leading role in the collaborative partnership that did not correspond with the (actual) state of affairs within the CT Infobox and which was undesirable with a view to a proper collaboration of the parties. After all, the participating organisations have an equal standing within the box. This collaboration is the very added value of the CT Infobox. For more on this subject, see section 6.2.

3.3 Position of the National Police Services Agency

The National Police Services Agency (KLPD) is one of the organisations mentioned in Article 60 WIV 2002. This makes the National Police Services Agency entitled to perform activities on behalf of the AIVD (see section 3.1).

The National Police Services Agency supplies information to the CT Infobox pursuant to Articles 17 and 62 WIV 2002. Much of the relevant information of the regional police forces is also provided to the CT Infobox by the National Police Services Agency. The National Police Services Agency also provides names of persons to be included in the CT Infobox.

Because of the increased attention of the National Police Services Agency for the combat of terrorism and/or radicalism, the National Police Services Agency has an important role within the CT Infobox.

The National Police Services Agency has appointed one of its officials as team leader in the CT Infobox. This team leader takes part in the Coordinating Consultation Body. The Head of the National Crime Squad of the National Police Services Agency also participates in the Coordinating Consultation Body.

The Financial Intelligence Unit Netherlands (formerly the Unusual Transactions Reporting Office (MOT)), the control of which falls under the National Police Services Agency, has been supplying information for the CT Infobox for some time. Because of the information from both this Unit and from the FIOD-ECD, the CT Infobox also obtains a picture of the persons included in the CT Infobox from a financial perspective.

3.4 Position of the MIVD

The collaboration between the AIVD and the MIVD is not based on Article 60 WIV 2002, but on Article 58 WIV 2002, which includes the statutory obligation for the MIVD and the AIVD to cooperate with one another. According to Article 58, paragraph 2 opening words and sub a, WIV 2002, this cooperation consists at any rate of the provision of information between the two services.³² In addition to information, the MIVD also supplies persons to be included in the CT Infobox.

The information provided by the MIVD concerns mainly terrorist and/or radicalism threats against, but also within the armed forces.

The relationship between the MIVD and the AIVD is – with a view to the requirement to cooperate of Article 58 WIV 2002 – different from that of the other services participating in the CT Infobox. The AIVD has no relationship of control vis-à-vis the MIVD, nor with regard to the activities that the MIVD's staff perform in the CT Infobox. Therefore the activities of the MIVD in the CT Infobox do not fall under the Minister of the Interior and Kingdom Relations' responsibility, but under that of the Minister of Defence.

The Head of the Counter-intelligence and Security Department (ACIV) of the MIVD participates in the Coordinating Consultation Body.

3.5 Position of the Immigration and Naturalisation Service

The position of the Immigration and Naturalisation Service in the CT Infobox is special, because this service is currently not mentioned in Article 60 WIV 2002 and therefore the Immigration and Naturalisation Service is not statutorily entitled to perform activities on

³² For this collaboration a covenant between the AIVD and MIVD was concluded on 20 October 2006; Government Gazette 1 November 2006, no. 213, p. 11.

behalf of the AIVD, other than supplying information. In the legislative proposal on the so-called Post-Madrid measures³³ the Immigration and Naturalisation Service is included in Article 60 WIV 2002.

Until the possible becoming effective of this legislative proposal the staff of the Immigration and Naturalisation Service according to the letter of the Minister of 26 September 2005 is considered as if they were Article 60 officials. This concerns an agreement between the parties involved, whereby the rules applicable to Article 60 officers have been declared applicable by analogy to the Immigration and Naturalisation Service staff in the CT Infobox. For example, they are to undergo the same security clearance investigation as AIVD staff and are subject to the same obligation to observe secrecy, which also extends to the relationship with their actual employer, the Immigration and Naturalisation Service.

It turned out in practice that by creating the CT Infobox the possibilities the Immigration and Naturalisation Service has with regard to persons related to terrorism and/or radicalism, can be used more effectively. For example, deporting people who pose a danger to national security, based on an advice from the CT Infobox.

The Immigration and Naturalisation Service provides information to the CT Infobox on the basis of Article 17 WIV 2002.

A representative of the Immigration and Naturalisation Service participates in the Coordinating Consultation Body of the CT Infobox.

3.6 Position of the Public Prosecution Service

As mentioned above, the Public Prosecution Service ‘does not sit on the CT Infobox, but does attend it’. In fact, it is only the National Public Prosecutor for Counter-terrorism (LOVJ)³⁴ who performs activities on behalf of the Public Prosecution Service for the CT Infobox.

The National Public Prosecutor for Counter-terrorism sporadically provides information to the CT Infobox, for example on (current) criminal cases. The basis for this is found in Article 61, paragraph 1, WIV 2002. The National Public Prosecutor for Counter-terrorism does not play a role in assessing the information supplied to the CT Infobox, and does not provide persons for inclusion in the CT Infobox.

The main task of the National Public Prosecutor for Counter-terrorism with regard to the CT Infobox is to assess all draft advisory documents prepared within the CT Infobox. This

³³ Parliamentary Documents 30 553.

³⁴ The LOVJ falls under the National Public Prosecutor’s Office in Rotterdam. This function is momentarily carried out by two officials.

is important in order to assess whether any proposed advice could be inconsistent with any investigations for prosecutions purposes in the area of counter-terrorism, for which the National Public Prosecutor's Office has also been given a leading and coordinating role. An assessment by the National Public Prosecutor for Counter-terrorism is also important with a view to the possible application of Article 38 WIV 2002, to the effect that the AIVD may send, via the National Public Prosecutor for Counter-terrorism, an official report on criminal facts established by the AIVD to the Public Prosecution Service. For the CT Infobox may issue an advice to the AIVD to provide information to the Public Prosecution Service. This way the National Public Prosecutor for Counter-terrorism can play its actual role, in the context of the AIVD issuing official reports to the Public Prosecution Service³⁵, at an early stage. Together with the team head of the AIVD and that of the National Police Services Agency, the National Public Prosecutor for Counter-terrorism signs all (internal) advisory documents of the CT Infobox.³⁶

The National Public Prosecutor for Counter-terrorism is not an Article 60 official. His tasks ensue from, among other things, Article 38 WIV 2002, but also from, for example, Article 61 WIV 2002.

As to the involvement of the National Public Prosecutor for Counter-terrorism in the CT Infobox, the Minister of Justice is responsible.

The deputy Chief Public Prosecutor of the National Public Prosecutor's Office participates in the Coordinating Consultation Body on behalf of the Public Prosecution Service.

3.7 Position of the FIOD-ECD

The FIOD-ECD is one of the services that falls under Article 60 WIV 2002.³⁷ This department is therefore entitled to perform activities on behalf of the AIVD (see section 3.1).

The FIOD-ECD is not primarily involved in the combat of terrorism and/or radicalism. However, the FIOD-ECD can play an important support role by supplying information to the CT Infobox. This way the CT Infobox also obtains a picture of the persons included in the CT Infobox from a financial perspective.

The FIOD-ECD provides information to the CT Infobox on the basis of Article 17 WIV 2002. This service is not represented in the Coordinating Consultation Body.

³⁵ For more information about this, see the supervisory report of the Committee no. 9A on the official reports issued by the AIVD, which can be referred to via www.ctivd.nl.

³⁶ See also section 5.1.

³⁷ In this context Article 60 WIV 2002 designates the director-general of the national tax office of the Ministry of Finance.

3.8 Position of the National Coordinator for Counter-terrorism

The National Coordinator for Counter-terrorism (NCTb) is not a participant of the CT Infobox. The National Coordinator for Counter-terrorism's only involvement in the CT Infobox is the attendance of meetings of the Coordinating Consultation Body by a representative of the National Coordinator for Counter-terrorism. This involvement does not have a statutory basis, but ensues from an oral agreement referred to in the letter from the Minister of the Interior and Kingdom Relations of 18 March 2005.

The National Coordinator for Counter-terrorism is mentioned neither in the WIV 2002, nor in the covenant of the CT Infobox. There is however a covenant that arranges the cooperation between the AIVD and the National Coordinator for Counter-terrorism.

The Committee observes that there is a certain lack of clarity among participants of the CT Infobox about the position of the National Coordinator for Counter-terrorism within the Coordinating Consultation Body. For example, there are no clear agreements as to what room the National Coordinator for Counter-terrorism has in performing a substantial role in the Coordinating Consultation Body, and what information the National Coordinator for Counter-terrorism may obtain. The Committee has established that the participants in the CT Infobox are critical of the involvement of the National Coordinator for Counter-terrorism in the Coordinating Consultation Body. Several members are of the opinion that, in the presence of the representative of the National Coordinator for Counter-terrorism, operational matters cannot be discussed, because this involves sensitive information which the National Coordinator for Counter-terrorism does not necessarily have to know with a view to the tasks he is charged with.

The Committee has established that the lack of clarity on the role of the National Coordinator for Counter-terrorism has caused some friction in the cooperation. The participation of the National Coordinator for Counter-terrorism in the Coordinating Consultation Body is unclear, because the National Coordinator for Counter-terrorism is not a party to the covenant. And therefore his participation must ensue from his general tasks and powers. This task is unclear due to a lack of statutory basis. The Committee points to the fact that the National Coordinator for Counter-terrorism (only) finds its basis in an institutional arrangement of the Minister of Justice and the Minister of the Interior and Kingdom Relations³⁸ and lacks an explicit statutory basis.

The National Coordinator for Counter-terrorism has another connection with the CT Infobox, namely as recipient of advice on the person-specific approach.³⁹ For this the Committee refers to section 5.5.

³⁸ Institutional arrangement of 29 June 2005; Government Gazette 5 July 2005, no. 127, p. 12.

³⁹ Formerly referred to as 'person-specific disruption'.

4 Processing of information by the CT Infobox

4.1 Including persons in the CT Infobox

In principle each participating organisation within the CT Infobox is entitled to nominate persons to be included in the CT Infobox. In practice, however, the AIVD, the National Police Services Agency and the MIVD are the only organisations to present persons to the CT Infobox. The AIVD is the organisation that – via its various counter-terrorism teams – presents by far the most persons. So far the FIOD-ECD has not presented any persons, but it does have the possibility to do so.

Reporting individuals takes place by means of an intake form that is to be approved by the AIVD's team head or the team leader of the National Police Services Agency within the CT Infobox. The consequence of this approval is that the persons presented are to be included in the CT Infobox.

The four organisations referred to have formulated criteria to determine in what cases a person *may* be presented to the CT Infobox. There are equal criteria for the AIVD and the MIVD.

These criteria are:

- Including a person in the CT Infobox must be within the context of the WIV 2002 (more in particular Article 13 WIV 2002);
- The persons and networks to be included must in one way or another be involved in (Islamist) terrorism and radicalism or the support of these;
- The person to be included is under investigation, or has been the subject of investigation, by at least one of the services involved;
- Including a person or network in the CT Infobox is supplementary to and is not a substitution of an investigation by one of the services involved;
- Including a person in the CT Infobox must have a demonstrable added value.

The AIVD and MIVD have also developed criteria based on which a person *must* be reported to the CT Infobox. This obligation has been drawn up for the various teams of the services. These criteria mean that a person is to be reported to the CT Infobox if – in the context of an investigation into Islamist terrorism – information about this person is collected in a specific way. It is not always clear when this is the case. A rule adopted by the services is that a request for using a special power against an individual, involves at any rate the specific collection of information.

The National Police Services Agency has developed its own criteria in consultation with the National Public Prosecutor's Office.

These criteria include the following; persons who are a suspect in the context of (Islamist) terrorism, or persons against whom special investigative powers are employed based on

Article 126o ff. of the Code of Criminal Procedure⁴⁰, may be reported to the CT Infobox on account of their likely involvement in (Islamist) terrorism. Also persons who offer support to activities of a terrorist nature can be reported to the CT Infobox.

The FIOD-ECD has also formulated criteria for reporting persons in the CT Infobox. We expect that the FIOD-ECD will only rarely report a person for inclusion in the CT Infobox. Thus far, this has not happened.

The criteria of the FIOD-ECD basically imply that when a person is involved (or has been involved) in activities of a financial-economic nature to support or finance (Islamist) terrorism and/or radicalism and this person is under suspicion of being guilty of criminal offences that belong to the policy area of the FIOD-ECD, he can be reported to the CT Infobox.

Since the CT Infobox has been made to fall under the scope of the WIV 2002, when reporting persons for inclusion in the CT Infobox the statutory criteria will need to be applied that apply to processing information within the context of the WIV 2002. The main criterion in this context is the requirement that personal data may only be processed, among other things, when a person gives rise to the serious suspicion that he or she poses a danger to the democratic legal order, or to the security or other vital interests of the state (Article 13, paragraph 1, sub a WIV 2002). The covenant also contains this requirement by means of explicit reference to this Article (see clause 3).

The criteria formulated by the AIVD and MIVD are in line with this requirement, as are the criteria of the National Police Services Agency and the FIOD-ECD.

As to reporting persons by the National Police Services Agency, the Committee in this context refers to the Act on Expansion of the Possibilities for Investigation and Prosecution of Terrorist Crimes.⁴¹ Under this Act the police may already conduct certain investigative activities on the basis of *indications* of a terrorist offence. According to the Committee, the Act may lead to persons being reported to the CT Infobox (at an earlier stage) by the National Police Force.

For the actual effect in practice of the criteria for including persons in the CT Infobox the Committee refers to section 7.2.

⁴⁰ This concerns persons who are involved in an organisation against which there is a reasonable suspicion that certain crimes are contrived or committed within the organisation which in view of their nature or correlation with other crimes contrived or committed within that organisation, constitute a serious violation of the public order.

⁴¹ Act of 20 November 2006; Bulletin of Acts and Decrees 2006, 580.

4.2 Removing persons from the CT Infobox

Within the CT Infobox criteria have also been formulated for removing persons from the list of the CT Infobox. Persons are removed from the list inter alia when they are not, or no longer, relevant, upon emigration/deportation or in case of an imprisonment of at least 12 years. Removal currently effectively implies that the CT Infobox is no longer dealing with these persons.

The Committee refers to section 7.2 for the actual effect in practice of the criteria for removing individuals from the CT Infobox.

4.3 Providing and processing information

Pursuant to clause 7, paragraph 1, of the covenant the participating services ensure that the CT Infobox has access to all relevant data files they have. They do so by allowing direct automated reference, or - in expectation of that possibility - in another appropriate way. Almost all participating parties have meanwhile realised this direct access to the data files. Only the MIVD has opted for another approach. For the MIVD's contribution to the CT Infobox the MIVD has created a so-called front office and back office. The front office consists of two MIVD staff members active in the CT Infobox, whereas the back office is made up of two staff members who perform activities within the MIVD. These latter two staff members put the various search questions regarding persons included in the CT Infobox to the MIVD's relevant departments. The information received is subsequently provided to the MIVD staff members in the CT Infobox.

The MIVD has chosen this set-up for a number of reasons mostly of an organisational nature. This approach creates a necessity for the other participating services to agree with providing the MIVD with names of persons included in the CT Infobox, for this is a form of data provision. Although the MIVD's choice for granting access to its information on behalf of the CT Infobox appears plausible, it does put the CT Infobox in a difficult situation. The Committee recommends to the MIVD - also in view of the provision laid down in clause 7, paragraph 1, of the covenant - to take a closer look at other possibilities for a different, more direct access.

In connection with the above, staff members of the MIVD in the CT Infobox do not have direct access to the data files of several other participating services.

After the intake of a person, staff members working in the CT Infobox on behalf of the participating services enter information of this person into the CT Infobox. A 'CV' is prepared of each person reported, which contains all the information from the various services.

Currently all data files of the various services are to be checked manually, which step is to

be repeated for each individual person periodically. This is a time consuming affair that takes up much of the CT Infobox's capacity. By way of a collaborative partnership of the AIVD, the National Police Services Agency, the Netherlands Forensic Institute (NFI) and the National Coordinator for Counter-terrorism attempts are made to search the various systems in a more automatic way. A so-called 'search shell' has been created for this which is to considerably improve the reference functionality in the CT Infobox. This is to result in a greater capacity for the other main function of the CT Infobox, i.e. the analysis function.

The development of this search shell has been made into a larger project that focuses on the processing of information. The project also seeks new methods for analysing data, for example through automated file analysis (data mining) which allows the searching of files based on previously formulated search criteria (profiles). We have the impression that the actual purpose of the project where the search shell is concerned, which was aimed at a quicker and more effective searching of files, has faded into the background. For the CT Infobox itself, however, the search shell has priority.

The Committee observes in this context that it is crucial for an adequate functioning of the CT Infobox to have a properly working search system. The Committee recommends giving priority to effect this.

The Regional Intelligence Services supply information as well. The Regional Intelligence Services receive the list with persons from the CT Infobox, with the request to search for these individuals in the specific files of the regional police forces and provide the results to the CT Infobox.

The Regional Intelligence Services carry out their activities for the AIVD on the basis of Article 60 WIV 2002. They fall under the supervision and responsibility of the AIVD or the Minister of the Interior and Kingdom Relations. Under Article 60 WIV 2002 staff members of the Regional Intelligence Services are deployed as if they were AIVD staff. The provision of information to the Regional Intelligence Service should therefore be seen as an internal form of data provision.

Unlike it is sometimes thought, including information in the CT Infobox does not transfer the power of decision regarding this information to the CT Infobox. The organisation from which the information originates, continues to have this power of decision regarding the processing of information in the context of its own tasks.⁴² The same naturally applies to undertaking any activities based on the own information.

To process the information in the CT Infobox, which is performed under the supervision of the AIVD, the AIVD has developed a new automated administration system in which all

⁴² Clause 7, paragraph 2, of the covenant.

information is entered. In this system the information on a person is recorded in a structured and clear way, with direct reference to the organisation the information originates from. The purpose of this is among other things to be alert to not mingling investigative information and intelligence from the AIVD and the MIVD.

For the present investigation the Committee was given full access to this system and thus to all information present in the CT Infobox. It is a clear and accessible system, which has given the Committee substantial support in its investigation.

5 Advice by the CT Infobox

5.1 Introduction

After the staff members of the various organisations in the CT Infobox have processed all the relevant information on a certain person, this information must be assessed. This assessment is first performed within several clusters of the CT Infobox. In these clusters, staff members of in principle all participating organisations in the CT Infobox (except for the Public Prosecution Service) have a seat which allows an assessment of information from different angles. This in turn allows for viewing the various possibilities for the approach of a person in a mutual connection, facilitating a proposal for the most suitable follow-up procedure.

The clusters present the proposals for a specific approach to three persons, namely the team head of the CT Infobox of the AIVD, the team leader of the CT Infobox of the National Police Services Agency and the National Public Prosecutor for Counter-terrorism.⁴³

These three persons must sign the proposal, after which it is sent to the Director of the Democratic Legal Order Directorate (D1) of the AIVD by way of an advice of the CT Infobox to one of the participating services (or to the National Coordinator for Counter-terrorism, see section 5.5). On behalf of the Head of the AIVD, this Director is authorised to provide such an advice of the CT Infobox as an appendix to a presentation letter to one of the participating services. If the nature of the advice gives rise to this, the letter is signed at a higher level, namely by the Head of the AIVD or the Minister of the Interior and Kingdom Relations.

It should be noted here that this only concerns *advice*. The ultimate decision to proceed to a specific action is taken by the recipient of the advice.⁴⁴ This is where in principle the responsibility lies.

⁴³ For the role of the National Public Prosecutor for Counter-terrorism in this context, see section 3.6.

⁴⁴ See however section 5.5 for the complications in this respect in the person-specific approach.

In the advice given by the CT Infobox, the so-called NOWC requirement (no action without consultation) is important. This means that information available in the CT Infobox or information processed in the advice given by the CT Infobox, is not provided to persons or bodies outside the CT Infobox without the permission of the service from which the information originates. The provision of information takes place in accordance with the statutory provisions in place for this.⁴⁵

The basis for the CT Infobox's procedure for providing advice is found in Article 36 WIV 2002. Because the CT Infobox falls within the AIVD (and consequently under the WIV 2002), any advice is to be regarded as a form of external data provision by the AIVD.⁴⁶ Therefore no direct form of advice from the CT Infobox to the participating organisations (and the National Coordinator for Counter-terrorism) is involved.

The CT Infobox and the Coordinating Consultation Body have spent much time considering the proper form of providing advice to the participating services. In the end the Coordinating Consultation Body reached agreement on the above procedure of providing information. The view held by several participating organisations was first that by providing it in this way, the nature of the advice looked to much like an official report from the AIVD.⁴⁷ After all, such an official report has the same statutory basis as an advice from the CT Infobox. According to these organisations, the specific nature of the advice by the CT Infobox would not receive due attention and would too strongly resemble the provision of information by the AIVD.

This procedure of providing information could also lead to odd situations.

When, for example, the National Police Services Agency is the only body to provide information, and the CT Infobox wishes to issue an advice to the National Police Services Agency, this must also take place via the procedure laid down in Article 36 WIV 2002. In this case also the advice should be sent as an appendix to a presentation letter from the Director of D1 of the AIVD to the National Police Services Agency. The advice, however, only concerns the information from the National Police Services Agency, and the National Police Services Agency is indeed entitled to act independently based on this information.⁴⁸ According to several participating organisations, this could create a false picture regarding the AIVD's involvement in the (in the case in hand) National Police Services Agency's actions.

⁴⁵ See clause 8 of the covenant of the CT Infobox.

⁴⁶ See however section 5.2 for the advice given to the AIVD and the MIVD.

⁴⁷ For official reports from the AIVD see the Committee's supervisory report 9A on official reports issued by the AIVD, which can be consulted via www.ctivd.nl.

⁴⁸ See clause 7, paragraph 2, of the covenant of the CT Infobox which - briefly put - explains that the provider of information to the CT Infobox continues to have power of decision regarding this information.

This problem has meanwhile been acknowledged and it has been decided to no longer provide an advice from the CT Infobox in such situations. Since it only concerns information from (in the case in hand) the National Police Services Agency, the Committee considers this justified.

As mentioned, the Coordinating Consultation Body has ultimately opted for providing advice of the CT Infobox via Article 36 WIV 2002. Because formally the CT Infobox falls within the WIV 2002, the Committee, too, is of the opinion that the procedure for giving advice of the CT Infobox opted for is the only statutory option for providing information. However, the Committee understands the objections raised by several of the participating services with respect to the manner of providing information, including the false picture that may arise.

Further on in this report the Committee will observe that, and why, it considers a more detailed statutory arrangement of the CT Infobox desirable. This arrangement should contain among other things a less complicated advice procedure.

The CT Infobox provides four different types of advice. These involve:

- Advice to the AIVD and the MIVD;
- Advice to provide information to the other participating organisations in the CT Infobox;
- Advice to alert the participating organisations in the CT Infobox to a specific issue;
- Advice to the National Coordinator for Counter-terrorism on a person-specific approach.

In the sections below the Committee will enter in more detail into these forms of advice.

It should be observed that an announcement pursuant to Article 38, paragraph 1, WIV 2002, namely the written announcement to the Public Prosecution Service that certain information (from the AIVD or MIVD) may be relevant for the investigation and prosecution of criminal offences, does not take place by way of an advice from the CT Infobox, but via an official report from the Minister of the Interior and Kingdom Relations, or the Minister of Defence. When the CT Infobox comes across such information, it is possible to advise the AIVD or MIVD to provide an official report to the Public Prosecution Service.

5.2 Advice to the AIVD and the MIVD

Because the CT Infobox falls within the scope of the AIVD (and the WIV 2002), advice given by the CT Infobox to the AIVD is to be considered as *internal* advice. This advice is therefore not issued, as set out under 5.1, by means of a formal procedure whereby the Director of the Democratic Legal Order Directorate of the AIVD offers the advice on behalf of the Head of the AIVD.

This internal form of provision of information falls under the scope of Article 35 WIV 2002, which provides that provision of information processed by the AIVD to a specific official of the AIVD, can only take place insofar as this is necessary for a proper performance of the task assigned to this official. This regulation is also referred to as the ‘need to know’ principle. This principle is leading for activities performed by the intelligence services.

The advice given by the CT Infobox to the MIVD does not follow the procedure set out under 5.1, either, as this advice is provided under Article 58 WIV 2002 which arranges the cooperation between the two services. Therefore this advice, at least from a legal perspective, cannot be compared with the advice given to the other participating organisations.

5.3 Advice to provide information to the other participating organisations in the CT Infobox

The CT Infobox has a full overview of the information the participating organisations have on a specific person. The CT Infobox is therefore able to assess whether one of the participating organisations has information that may be of interest to one of the other organisations. Where this is the case, the CT Infobox will inform the organisation having the information, via an advice.

The basis for this is found in Article 36, paragraph 1, WIV 2002, and, in line with it, clause 4 of the covenant of the CT Infobox, with the exception of the case in which such an advice is issued by the CT Infobox to the AIVD or the MIVD (see section 5.2).

5.4 Advice to alert the participating organisations in the CT Infobox to a specific issue

General

An advice to alert the participating organisations in the CT Infobox to a specific issue means that it is pointed out to an organisation in the CT Infobox that it may take certain measures based on information that may be provided to it by another organisation in the CT Infobox. Most of the time, such an advice will be provided simultaneously with an advice as referred to in the previous section.

The procedure for providing the information is the same as mentioned in section 5.3.

The advice can be in the area of intelligence⁴⁹, prosecution, aliens law or tax law.

Advice in the area of intelligence can be given by the CT Infobox to the AIVD or MIVD and

⁴⁹ For the sake of convenience such advice to the AIVD or the MIVD is discussed in this section and not in section 5.2.

will mean that these services have possibilities for performing a more extensive investigation into a certain individual. In case of such a (follow-up) investigation, unlike in the context of the CT Infobox, special powers may be employed.

Advice in the area of prosecution can be given to the National Police Services Agency; this means that certain information may be followed up from the angle of prosecution, for example regarding an individual as a suspect, on the basis of which a more detailed investigation may be based.

Advice in the area of aliens law is issued to the Immigration and Naturalisation Service and indicates that the Immigration and Naturalisation Service has specific possibilities regarding a specific person. For example, the power of the Immigration and Naturalisation Service to deport an individual on the basis of certain information.

The FIOD-ECD may be given the advice to deal with an individual from a tax law perspective, implying that this service can take measures against a person for example by instituting an investigation under tax law.

Monitoring a person by the National Police Services Agency

In addition to the above advice there is also the possibility to advise the National Police Services Agency to monitor an individual. Monitoring may be involved when other trajectories turn out not to be possible, or not to be expedient. It is also possible that monitoring takes place parallel to one of the other procedures.

Monitoring is aimed primarily at completing the information on a person by actively collecting information by the police. An advice to monitor an individual means that the responsibility for keeping up to date the access to information regarding a specific person, is passed on from the CT Infobox to the National Police Services Agency. In such a case the CT Infobox discontinues its own (reference) activities.

An advice to the National Police Services Agency concerning monitoring can only be issued when the National Police Services Agency has sufficient information on the person in question. For on the basis of this information the National Police Services Agency must be independently authorised to collect further information.

All the available (police) information is collected and bundled at the National Police Services Agency where an assessment of the person in question is made. First, it is looked into on what points the access to information of the National Police Services Agency may be improved. Subsequently, a plan with a focus on the individual is prepared in which an estimate is made of the threat emanating from the person. The National Police Services Agency has formulated a model for this by which the persons posing the greatest threat are investigated in most detail.

The plan also lists the activities that are to be performed, and by which police departments (e.g. a regional force). This may concern an information search in the police systems, but also an active collection of information by the regional forces, for example the deployment

of a community police officer who is to collect information on an individual or his environment.

The various results are passed on to the National Police Services Agency by the various police forces involved in the monitoring. Periodically, the National Police Services Agency prepares a report setting out the state of affairs, the progress and the results of the monitoring. This report is subsequently sent to the CT Infobox.

Monitoring a person can be terminated among other things by an advice to that end of the CT Infobox.

Recently, the CT Infobox presented the first persons to the National Police Services Agency for the monitoring trajectory.

5.5 Advice on the person-specific approach to the National Coordinator for Counter-terrorism

Unlike the forms of advice mentioned above, one type of advice is intended for a third body, namely the advice to the National Coordinator for Counter-terrorism on a person-specific approach (formerly referred to as 'person-specific disruption'). The person-specific approach, as a new instrument in counter-terrorism, and the advice of the CT Infobox underlying it, has recently been fine-tuned. The CT Infobox and the Coordinating Consultation Body spent much time thinking about the role the CT Infobox could and should fulfil in this context.

Although the person-specific approach is performed by a different body than the CT Infobox and the AIVD, the Committee, because of the important (initiating) role the CT Infobox plays in this context, wishes to make some observations on this subject. In doing so, the Committee pays special attention to the (infringing) form of person-specific approach described a little further on in this report. In the course of the Committee's investigation, it turned out that there was a lack of clarity as to what the instrument actually implies and what its possibilities are. For this reason also, the Committee will enter in more detail into the person-specific approach.

The person-specific approach

The person-specific approach is aimed at monitoring an individual posing a terrorist threat in such a way that it is clear for him as well as for his environment that he is the subject of some kind of investigation by the government. Purpose of this is to avoid that this person could still play a role in terrorism-related matters. It is attempted to prevent this person from further development towards terrorist activities.⁵⁰

⁵⁰ For information on the person-specific approach, see the website of the National Coordinator for Counter-terrorism: www.nctb.nl.

No further statutory rules have been formulated for the person-specific approach. This concerns the use of existing powers.

The activities performed in this procedure are initiated by the regional forces first. The legal basis for it is currently the police's public order task (Article 2 of the Police Act 1993) which is performed under the responsibility and authority of the mayor (Article 12 Police Act 1993 and Article 172 Municipalities Act). The Committee has learned that the person-specific approach is performed by several regional police forces only.

The activities performed include for example surveillance at set times at the place of residence of the individual against whom a person-specific approach is used, house calls, addressing the parents of the person involved, addressing his work environment, inviting the person involved to the police station, etc. Using special powers, such as systematic observation, is not permitted.

In this section the Committee confines itself to the above (infringing) form of person-specific approach/disruption. In practice the use of other means aimed at a specific person is sometimes also referred to as 'disruption', for example 'thwarting' a proposed plan by informing the person that the police know about the plan.

The form of person-specific approach ('disruption') described above must also be distinguished from the AIVD's power that is often referred to as the power to disrupt. This power of the AIVD means that (an agent of) the AIVD may take certain measures to protect the interests promoted by the AIVD (Article 21, paragraph 1 sub a opening lines and under 2°, WIV 2002). Often, this concerns an imminent threat of danger that is to be averted forthwith. The AIVD may use this power when there is no other option to avert the danger, for example by calling in the police.

Role of the CT Infobox and the National Coordinator for Counter-terrorism

Within the CT Infobox - in coordination with the National Coordinator for Counter-terrorism - criteria have been developed in which cases an individual qualifies for a person-specific approach. Relevant in this context is, among other things, that the person involved poses a substantial terrorist threat and that as a consequence of this, it is necessary to thwart his actions. Besides this, there may not be the (immediate) option of prosecution under aliens law or criminal law whereas an approach based on intelligence (only) is not possible or not opportune.

When a person meets the criteria, the CT Infobox may provide an advice for a person-specific approach to the National Coordinator for Counter-terrorism. The legal basis for this is found in Article 36, paragraph 1, WIV 2002. The covenant (including the preamble to it), however, does not explicitly state that such an advice by the CT Infobox is among the possibilities.

The CT Infobox does not make a comparative assessment based on proportionality and subsidiarity, for the CT Infobox is unable to do so, because at the moment of giving advice, the CT Infobox is unaware which specific activities regarding an individual will be performed.

The National Coordinator for Counter-terrorism has set up a separate Steering Group Person-specific Approach for the person-specific approach, in which representatives of the AIVD, the National Police Services Agency, the Immigration and Naturalisation Service and the regional police forces of the four major cities take part. The Steering Group is presided over by the deputy National Coordinator for Counter-terrorism. The Steering Group assesses which organisation is most suitable for executing the measures proposed. The Steering Group subsequently provides this organisation with an advice on a person-specific approach.

The National Coordinator for Counter-terrorism is not permitted inspection of the underlying documents of the CT Infobox leading to the advice of the CT Infobox. The same applies in principle to the responsible official who subsequently receives an advice for a person-specific approach from the National Coordinator for Counter-terrorism (often the mayor). In some cases it is complicated for the mayor to give a well-founded opinion on, for example, the proportionality of the means, in particular when the police have hardly or no information on the person involved. If required, the mayor may request further information from the AIVD in order to give a well-considered advice. The AIVD may subsequently do this by means of an official report.

The CT Infobox is informed about the progress of the use of the means. Based on this information the CT Infobox may decide to issue an advice to terminate the person-specific approach. Naturally the responsible mayor himself may also decide to stop the use, just as he can independently decide, i.e. apart from an advice from the CT Infobox, to use the means.

Findings of the Committee on the person-specific approach

The Committee has established that with a view to the increased terrorist threat a way is sought to keep certain individuals under control. In the end the person-specific approach in its current form was formulated, for which no further statutory rules have been provided.

The Committee has established that there is a lack of clarity about the role and responsibilities that various organisations need to have in employing the person-specific approach. The role of the National Coordinator for Counter-terrorism, for example, is not embedded in an explicit statutory basis, nor does the institutional arrangement of the National Coordinator for Counter-terrorism offer sufficient clarity regarding the tasks and

responsibilities of the National Coordinator for Counter-terrorism in this area. Due to this lack of clarity there is a debate about the scope of each body's responsibilities and powers. The participating organisations in the CT Infobox hold different views on this.

Advice (and also official reports) are issued to persons/bodies that based on the advice are authorised to take measures. In case of advice on the person-specific approach, this is not the case. This advice is given to the National Coordinator for Counter-terrorism, who may subsequently send it on to the competent body (the mayor of the place of residence of the individual involved). The Committee wonders whether this is the most efficient and effective means for giving advice on a person-specific approach. In the Committee's opinion, there should be more transparency on the means in case of a direct advice to the competent body, i.e. the mayor.

The Committee has established that several organisations participating in the CT Infobox have doubts about the role of the National Coordinator for Counter-terrorism in this context, since the National Coordinator for Counter-terrorism cannot add anything to the advice but can merely pass it on.

In some cases it is also complicated for the mayor, the body ultimately responsible for the decision to give substance to the decision for a person-specific approach, to render a well-considered opinion about (the proportionality of) the means. For the body from which the mayor receives the advice (the National Coordinator for Counter-terrorism) often does not have the (full) information based on which it can be decided to use the means. If the police have only little information, the mayor is subsequently dependant on the AIVD for fulfilling his need for information (in some cases). With a view to the importance of secrecy this could be difficult for the AIVD, although maybe the outcome of the Working Group Data Provision - mayors (which the Minister of the Interior and Kingdom Relations has taken over) could play a leading role in this context. According to this Working Group, it must be possible for the AIVD to inform the mayor adequately.⁵¹

Because of the often secret nature of the information underlying the advice for a person-specific approach, in the Committee's opinion it can be complicated for the mayor to render account to the municipal council about applying the means. Therefore it is difficult for the municipal council to control this.

It should be observed that little is known about the effectiveness of the use of the person-specific approach.

In the Committee's opinion there is currently a lack of clarity when a person-specific approach may be proceeded to. This applies both to the bodies who give the advice to use the means (CT Infobox and National Coordinator for Counter-terrorism) and the mayor

⁵¹ See Parliamentary Documents II 2005/06, 29 876, no. 9.

who eventually decides on this, and to the individuals against whom the approach is used. There is a need for clear requirements for using a person-oriented approach, because the measures to be used – despite the fact that these do not involve any special powers – may imply an infringement of a person’s privacy. This applies in particular when the measures that can be taken as well as the consequences they may have, are considered in their full spectrum. In this context the Committee refers to the requirements laid down in Article 8 of the European Convention for the Protection of Human Rights (ECHR) and the case law of the European Court of Human Rights ensuing from it. The main requirement in this context is the criterion of foreseeability, which, according to previous decisions by the European Court of Human Rights, is a fixed part of the criterion ‘in accordance with the law’ (Article 8, paragraph 2, ECHR). This criterion means that a person must reasonably be able to foresee under what circumstances and in what way the government may infringe his human rights.⁵²

The Committee has doubts as to whether Article 2 of the Police Act 1993 offers a sufficient statutory basis for the person-specific approach.⁵³ The Committee has established that this doubt is shared by several contacts of the Committee in this investigation. The judgment of the legal basis of the person-specific approach, in the Committee’s opinion, is directly linked to the legal basis of the advice given in this context by the CT Infobox, which is issued under the scope of the WIV 2002.

In the Committee’s opinion, the person-specific approach cannot take place without an explicit statutory basis, in which the role and responsibilities of each party are clearly described and in which the requirements for applying the means are sufficiently clear.

If the government and parliament are of the opinion that further statutory provisions are required for the person-specific approach, in the Committee’s opinion a comparison could be made with the Prevention of Terrorism Act 2005 of the United Kingdom, part of which Act may be relevant for the person-specific approach in the Netherlands. As to applying certain powers, but also as to the procedure that is to be followed, this Act could set a good example for a new statutory arrangement. The experiences gained in the United Kingdom with using this Act could also be taken into consideration.

In the Committee’s opinion it could be considered integrating the person-specific approach – if using this approach is considered desirable – into the legislative proposal Administrative Measures on National Security.⁵⁴

⁵² For the requirement of foreseeability see, for example, the case *Kruslin and Huvig*: European Court of Human Rights 24 April 1990, Series A 176a and 176b, NJ 1991, 523 (with annotation EJD).

⁵³ See also the inaugural lecture of Prof J.G. Brouwer of Groningen University ‘*Van nachtbrakers tot terroristen, over persoonsgericht verstoren*’ (*From clubbers to terrorists; on person-specific disruption*); to be referred to via www.rug.nl.

⁵⁴ Parliamentary Document number 30 566.

Difference between monitoring and the person-specific approach

The difference between the person-specific approach and monitoring, whereby the National Police Services Agency's task is to keep up-to-date the picture of an individual both through information searches and by actively collecting information⁵⁵, is mainly found in the respective objectives and the fact that the person-specific approach is performed in the open and, in principle, monitoring is not directly visible to the individual involved. This already goes to show that the impact of the person-specific approach towards a person is greater than him being monitored. This impact is even enhanced by the fact that, although both are in principle based on Article 2 of the Police Act 1993, the powers used in case of the person-specific approach exceed those used for other approaches, such as surveillance near the person's home address.⁵⁶ Applying such powers in the open may lead to a certain picture being created regarding this person.

Monitoring is aimed first at obtaining extra information about an individual, whereby a community police officer may for example be deployed. The primary purpose of the person-specific approach is to avoid a further development of the person involved in matters related to terrorism and radicalism. However, the person-specific approach and monitoring do overlap partly.

The Committee observes that the responsibilities of the various organisations are more clear in case of monitoring than in case of the person-specific approach.

Disrupting sources of radicalisation

In addition to the person-specific approach ('disruption'), the so-called 'sources of radicalisation' are also disrupted. This takes place under the supervision of the National Coordinator for Counter-terrorism. This form of disruption is aimed at taking measures against certain institutions or locations that have a radicalising influence. This form of disruption also encompasses the use of existing powers for example in an administrative or financial area or pertaining to aliens law.⁵⁷

The CT Infobox does not play any role in this form of disruption.

⁵⁵ See also section 5.4.

⁵⁶ This form of surveillance may not become a systematic observation, because such a special power may not be employed under Article 2 Police Act 1993.

⁵⁷ For more information on disrupting sources of radicalisation see the website of the National Coordinator for Counter-terrorism: www.nctb.nl.

6 Legal embedding CT Infobox

6.1 Introduction

The CT Infobox was instituted because collaboration within the Analytical Cell, the predecessor of the CT Infobox, turned out to be a problem for the AIVD. Because of the rules applicable under the WIV 2002 concerning secrecy and providing information, the information of the AIVD could not be effectively transferred to this collaborative partnership. For this reason another form had to be chosen, whereby the AIVD could keep its information internal without the need to provide it to external parties. This resulted in the institution of the CT Infobox. Unlike the Analytical Cell, this collaborative partnership falls within the scope of the AIVD and the WIV 2002.

In his letter to the Lower House of 26 September 2005⁵⁸ (a follow-up to and partly in deviation of his letter of 18 March 2005⁵⁹), the Minister of the Interior and Kingdom Relations gave a more detailed explanation of the legal embedding of the CT Infobox. In this letter, the Minister described among other things the legal basis both of the participation of the various organisations in the CT Infobox and the provision of data to the CT Infobox, the processing of information in the CT Infobox and the rendering of advice by the CT Infobox. The Committee has explained these matters in the previous chapters.

6.2 The Committee's opinion on the legal embedding of the CT Infobox

In the Committee's opinion, in view of the necessity for the AIVD to keep its information in the collaborative partnership of the CT Infobox 'internal', including the CT Infobox, embedding in the WIV 2002 would be the most obvious thing to do. However, further legislation is desirable, for the following reasons.

Participation of organisations

The involvement of the participating organisations in the CT Infobox is based on various pillars (see chapter 3). In the Committee's opinion, on some points this result in a lack of clarity as to the tasks and responsibilities of the participating organisations. This could lead to friction in the cooperation, which indeed actually manifested itself. The Committee's recommendation is to lay down the role and position of all the parties to the CT Infobox in further statutory provisions.

⁵⁸ Parliamentary Documents II 2005/06, 29 754, no. 29.

⁵⁹ Parliamentary Documents II 2004/05, 29 754 and 27 925, no. 21.

Role of the AIVD and WIV 2002

The Committee has established that a number of participating services believe that, also because of the legal construction chosen for the CT Infobox, the AIVD took up too much of a leading position in the collaborative partnership in the initial stages. These services point to the fact that in accordance with the agreements made, the collaboration should take place on the basis of equality. This discussion resulted in several problems in the cooperation between the services which were an issue at management level. The Committee did not hear of any problems at the workplace as a result of this matter.

The Committee understands the fact that the CT Infobox was accommodated with the AIVD and therefore falls within the scope of the WIV 2002. Experience with the Analytical Cell showed that such a form of cooperation is difficult for the AIVD, because of the prevailing (statutory) restrictions in providing information. For this reason from the perspective of the AIVD the collaborative partnership had to be given an internal character. Participation of the National Police Services Agency, the FIOD-ECD, and shortly (probably) the Immigration and Naturalisation Service⁶⁰ is subsequently based on Article 60 WIV 2002, which provides that these services work on behalf of the AIVD, in which context the responsibility lies with the AIVD or the Minister of the Interior and Kingdom Relations, respectively.

The Committee has established that this legal construction will prompt a leading position of the AIVD in the collaborative partnership. However, the Committee sees such a construction (formally) as the only option to have the AIVD participate in the collaborative partnership in an effective way.

To give the CT Infobox a sound legal basis, it was therefore necessary to have it fall under the scope of the WIV 2002. It turned out that in the early stages of the CT Infobox the AIVD all too readily assumed that the legal reality (the CT Infobox falls under the control of the AIVD) would coincide with the actual reality (the CT Infobox is a collaborative partnership). As a result, in the past the AIVD had too much of a leading position within the collaborative partnership. The AIVD took insufficient notice of the necessary conditions for a proper cooperation.

In the Committee's opinion consensus should be sought as much as possible within the CT Infobox and the Coordinating Consultation Body, in order to see to it that any decisions have a broad basis thus avoiding conflicts between the participating organisations. In practice, this is indeed what happens at the moment.

In statutory provisions to be formulated, the CT Infobox should be described as a

⁶⁰ See the so-called Post-Madrid measures: Parliamentary Document number 30 553.

collaborative partnership between equal partners. An adequate mutual provision of information is crucial for the basis of this cooperation.

Of course a proper cooperation and mutual provision of information is not determined by adequate statutory provisions only. Also the culture of the services, and the trust the services have in one another determine the success of the cooperation within the CT Infobox.

Coordinating Consultation Body

The Committee considers it desirable that the Coordinating Consultation Body of the CT Infobox, because of the matters discussed in this Consultation, have a statutory basis. This offers the opportunity of a clear statutory description of the tasks and powers of the Coordinating Consultation Body.

The role of the National Coordinator for Counter-terrorism in this Consultation Body requires an explanation and according to the Committee also needs to be given a statutory basis (see section 3.8).

The Coordinating Consultation Body has been placed above the CT Infobox. From a formal legal perspective however, it is the AIVD that has control over the CT Infobox. Here, too, the legal and actual reality are at odds with one another. The Committee recommends giving the Coordinating Consultation Body a clearer position embedded in a statutory provision.

The advice procedure

The advice procedure of the CT Infobox is complicated and may lead to a false picture of the facts (see section 5). In the Committee's opinion, further legislation should provide for a more simple advisory procedure. For example, a more direct form of advice by the CT Infobox.

The person-specific approach and advice to third parties

As described in section 5.5 the Committee doubts whether Article 2 of the Police Act 1993 constitutes a sufficiently clear basis for the person-specific approach. If the government and parliament are of the opinion that it must be possible indeed to use this means, it is desirable to formulate an explicit statutory scheme. If the statutory scheme is established, in the Committee's opinion it is to create clarity on the role of the CT Infobox in (advising to adopt) a person-specific approach. There is a statutory basis for advice given by the CT Infobox (Article 36 WIV 2002), but the person-specific approach is currently not mentioned in the covenant. The Committee's recommends doing this.

In line with this, clarity should also be created on the manner of advising third parties by the CT Infobox.

Role of the Minister of Defence and Minister of Justice

Because the CT Infobox has been accommodated with the AIVD and falls within the scope of the WIV 2002, the Minister of the Interior and Kingdom Relations is responsible for the CT Infobox.⁶¹

However, the Minister of Defence has an independent responsibility for the MIVD's involvement in the CT Infobox (see section 3.4). The Minister of Justice has such a responsibility regarding the involvement of the Public Prosecution Service (section 3.6). In the Minister of the Interior and Kingdom Relations' letters of 18 March 2005 and 26 September 2005, respectively, to the Lower House, containing an explanation of the CT Infobox, it is not explicitly explained that the Ministers of Defence and Justice have their own independent responsibility for the role of the MIVD and that of the Public Prosecution Service in the CT Infobox.

The Committee recommends laying down the role of the Minister of Defence and the Minister of Justice, respectively, in respect of the CT Infobox in clearer terms.

Clarity on the work performed by the CT Infobox

The Committee has established that in practice (especially outside the CT Infobox) a lack of clarity exists about the work and methods of the CT Infobox. The complicated legal construction that was chosen is partly to blame for this. Apart from the substantial arguments set out above, in the Committee's opinion a more detailed statutory basis would add to a better understanding of what the CT Infobox precisely entails and what the possibilities and impossibilities of the CT Infobox are.

Moreover, a proper statutory basis would better reflect the unique character of the CT Infobox.

Letter of 18 March 2005 to the Lower House

In his letter to the Lower House of 18 March 2005, the Minister of the Interior and Kingdom Relations already presented his wish to codify the collaborative partnership in the WIV 2002. In his opinion this was desirable because it would give the collaboration in the CT Infobox a permanent character whereas the tasks of the collaborative partnership could be extended and be given a more profound purport in the future.⁶²

The Committee subscribes to the standpoint of the Minister, but observes that creating a further basis for the CT Infobox has not been effected to date. The Committee recommends providing an explicit statutory basis for the CT Infobox shortly.

In the Committee's opinion a further statutory scheme should be formulated in close consultation with all organisations involved.

⁶¹ See for example the letter of the Minister of the Interior and Kingdom Relations to the Lower House of 26 September 2005; Parliamentary Documents II 2005/06, 29 754, no. 29, p. 2.

⁶² Parliamentary Documents II 2004/05, 29 754 and 27 925, no. 21, p. 3-4.

7 Findings based on the situation in practice

This section contains the Committee's findings following its file investigation.

7.1 Intake

During the so-called intake, an individual is presented by the AIVD, the National Police Services Agency, the MIVD or the FIOD-ECD to be included in the CT Infobox. At this moment, the various counter-terrorism teams of the AIVD report most of the persons included.

In presenting a person, a so-called intake-form must be filled out. Ultimately the team head of the CT Infobox of the AIVD or the team leader of the National Police Services Agency in the CT Infobox decide whether the person meets the criteria and whether he or she can be included in the CT Infobox. This official needs to assess whether there is a serious suspicion that the person presented is a danger to the democratic legal order or to security or other vital interests of the state.

The Committee has established that the intake of an individual in the CT Infobox renders a diffuse picture. Only in a few cases does the intake form state well-founded reasons why the individual meets the criteria for being included in the CT Infobox. In the Committee's opinion it is difficult in some cases for the team head to give a well-considered opinion on inclusion.

The above applies in particular if a group of individuals is presented. In this case in the Committee's opinion it is appropriate to describe which role a specific person in a group or organisation has, and why he meets the criteria.

The Committee considers the arguments for inclusion of a person in the CT Infobox also important with a view to removing persons from the list of the CT Infobox. If there is clarity on the reason(s) why a person has been included in the CT Infobox, in the Committee's opinion it is also less complicated to assess at a later stage whether it is still justified for this person to be included in the CT Infobox. The Committee feels that this allows a more critical assessment of the persons on the list of the CT Infobox who can (or even must) be removed.

The above is important in the first place for the team or organisation presenting the individual. For this team or organisation is able to inform the CT Infobox's team head using well-considered arguments why it is appropriate to include this person in the CT Infobox.

In the letter of the Minister of the Interior and Kingdom Relations to the Lower House of 18 March 2005 the Minister explains that analysis and assessment in the CT Infobox of

eligible persons can never be a substitute for an investigation by one of the participating services if this could not be performed due to a lack of capacity or other priorities. An analysis and assessment in the CT Infobox should only take place if this could have an added value compared with an individual investigation by one or more services. The Minister stated that when persons are presented for analysis and assessment in the CT Infobox, this added value is to be motivated.⁶³

The Committee has established that most of the time in the intake of individuals in the CT Infobox, arguments pertaining to the added value of inclusion in the CT Infobox are not provided and that during the intake this added value is often not immediately clear. However, the Committee considers this of great importance, because it must be avoided that persons are too readily presented by the teams or organisations to the CT Infobox. There is a risk that this takes place in order to create a shared responsibility for the approach of a certain individual.

The Committee recommends that arguments for the added value for including a person in the CT Infobox always be provided during the intake.

7.2 Individuals included in the CT Infobox

Despite the fact that often during the intake of an individual it is not stated why this person meets the criteria and is therefore included in the CT Infobox, the Committee is able to render an opinion on the question whether the person has rightly been included in the CT Infobox. For the 'CV' created for each person (following the intake) (see section 4.2) shows what information (apparently) lay at the basis of a team or organisation presenting this person.

In the Committee's opinion not all persons included in the CT Infobox meet the requirements set for it. The Committee recommends to strictly apply the requirements for inclusion of individuals in the CT Infobox. This is necessary not only from the viewpoint of legitimacy, but it is also important for an efficient use of the means available to the CT Infobox.

The CT Infobox also includes a relatively large group of people found on the list of the regional infobox⁶⁴ of one regional police force. This group has been placed on the list of the CT Infobox (under the scope of Article 62 WIV 2002) for reasons of coordination. In the CT Infobox the people are registered only. The persons are not dealt with any further in the CT Infobox. The purpose of inclusion is to prevent an investigation of one of the

⁶³ Parliamentary Documents II 2004/05, 29 754 and 27 925, no. 21, p. 2.

⁶⁴ For these regional info boxes, see section 9.4.

participating services being thwarted by an investigation of the regional police force. Because of an overview of all information, such a task is in line with the activities of the CT Infobox, but the present covenant does not explicitly state this task. The Committee recommends supplementing the covenant on this point.

The Committee points to the importance of the persons who do not, or no longer, meet the criteria directly from the list or of the CT Infobox, being removed. It is to be avoided that individuals not or no longer meeting the criteria continue to be dealt with.

The Committee recommends critically assessing on the basis of previously formulated criteria, whether the individuals included in the CT Infobox may remain there, or should be removed. This obligation is first to be considered by the teams and organisations presenting these individuals. It is to be avoided that too many individuals remain on the list or in the CT Infobox 'just to be sure'.

The CT Infobox itself has already acknowledged that some individuals included no longer meet the criteria. The CT Infobox is currently clearing the list of persons: those not or no longer meeting the criteria will no longer be dealt with in the CT Infobox.

7.3 Processing of information

Because the CT Infobox falls within the scope of the WIV 2002, in its processing of information the CT Infobox will need to comply with the requirements laid down in the WIV 2002. The main requirement in this context is that the processing of information only takes place insofar as this is necessary for a proper execution of the WIV 2002 and that the processing of information is in accordance with the law and performed in a proper and careful way.⁶⁵ In addition to this the WIV 2002 includes several specific rules for processing individual data (Article 13 WIV 2002). The Article provides that these requirements also apply to officials who pursuant to Article 60 WIV 2002 carry out activities on behalf of the AIVD.⁶⁶

In the Committee's opinion the processing of (personal) data in the CT Infobox meets the requirements set to it, except for the processing of information of persons wrongly (still) on the list.

The Committee considers it important in this context that it is avoided within the CT Infobox - through clear reference to the origin of the information - that the various data are mingled thus harming the separation between investigation and intelligence work. Also in other respects the CT Infobox meets the requirements of soundness and carefulness in the processing of information.

⁶⁵ See Article 12, paragraph 2 and 3, WIV 2002.

⁶⁶ Article 14, paragraph 1, WIV 2002.

The above equally applies to the Article 60 officials of the National Police Services Agency, the FIOD-ECD and (by analogy) the Immigration and Naturalisation Service, for which pursuant to Article 14, paragraph 1, WIV 2002 the same requirements for the processing of information apply. By placing the CT Infobox under the AIVD, it is avoided that the processing of information for the AIVD (the CT Infobox) by Article 60 officials, coincides with the processing of information for other purposes (see Article 14, paragraph 2, WIV 2002).

Part of the processing of information concerns the provision of data (see Article 1 sub f WIV 2002). Some people think that there is an unlimited exchange of information in the CT Infobox. The Committee's investigation showed that this is not the case. The exchange of information is based on the WIV 2002 and meets the requirements set by the WIV 2002.

7.4 Advising

In its investigation the Committee asked itself the question whether the CT Infobox could in reasonableness arrive at the advice it has rendered in various instances. In the Committee's opinion this question can be answered positively. For its assessment of the (manner of) advising in respect of the person-specific approach, the Committee refers to section 5.5.

8 Other subjects in relation to the CT Infobox

8.1 CT Infobox and Criminal Intelligence Units

Within the CT Infobox and the Coordinating Consultation Body there has been discussion about the (extra) possibilities and added value which the provision of the list with names of the CT Infobox to the Criminal Intelligence Units could offer. These Criminal Intelligence Units are engaged with intelligence work in the area of organised crime, which also includes terrorism.

Providing the list of the CT Infobox to the Criminal Intelligence Units would allow these to actively interview their sources regarding the persons found on the list. This would result in extra information about these people, which would also be advantageous to the CT Infobox.

However, providing this list met with a number of obstacles. For provision could be inconsistent with the fact that the WIV 2002 has a closed system of provision, with the AIVD's statutory obligation of protection of sources and the obligation to keep secret the present level of knowledge of the AIVD.

It has been decided not to provide the CT Infobox's list to the Criminal Intelligence Units.

In the Committee's opinion the WIV 2002 does not offer the possibility to offer the list of names of individuals of the CT Infobox to the Criminal Intelligence Units with the purpose them actively interviewing them in order to obtain their sources. The AIVD has the right to provide information to the Criminal Intelligence Units in order to see whether they have any (already available) information.

8.2 The Coordination Consultation Terrorism (AOT)

Because of increased terrorist threat and the fact that many different organisations have their own responsibilities regarding the combat of this threat, various forms of consultation between these organisations have been created. A consultation that (partly) also influences the CT Infobox is the Coordination Consultation Terrorism (AOT) that is based on Article 62 WIV 2002.

Taking part in this consultation body are representatives of the National Police Services Agency, the AIVD and the Public Prosecution Service. It is presided over by the National Public Prosecutor for Counter-terrorism. The CT Infobox is also involved in the consultation. The Coordination Consultation Terrorism can be considered as an operational coordinating consultation body. Insofar as relevant, the functioning of the CT Infobox is discussed in this context.

With regard to the CT Infobox there is a certain overlap between the AOT and the Coordinating Consultation Body of the CT Infobox (section 2.3). It is currently being examined precisely what the role of these consultative bodies in relation to the CT Infobox should be, so that this overlap can as much as possible be avoided.

In the Committee's opinion it should be assessed in what way the provision of information and the secrecy within the AOT can best be formulated (formally). This is also aimed at avoiding any mingling of investigative information and intelligence of the AIVD. Meanwhile, steps have been taken in this respect.

8.3 Regional infoboxes

In connection with the terrorist threat a number of regional police forces have created internal consultative bodies under the name of 'regional infoboxes'. This name is somewhat misleading, because these regional infoboxes bear no resemblance with the CT Infobox, but have the character of coordinating consultative arrangements within the police force.

Because of the nature of these regional infoboxes, the Committee will enter into this issue in more detail in its supervisory report on the investigation into the Regional Intelligence Services, which is under preparation.

8.4 Document setting out the vision regarding the CT Infobox

Recently, the AIVD has drawn up a document setting out the vision regarding the CT Infobox, in which an evaluation is made of the CT Infobox and which identifies a number of bottlenecks. Purpose of this document is to carry out the tasks assigned to the CT Infobox as efficiently as possible, and to use the possibilities of each of the participating services in the best possible way. The document setting out the vision regarding the CT Infobox also contains proposals for the further development of the CT Infobox. In his letter of 18 March 2005 the Minister of the Interior and Kingdom Relations already mentioned such a development.

The Committee has taken cognisance of this (classified) document with interest.

9 Future developments

After the first experiences with the CT Infobox and based on the recently prepared document setting out the vision regarding the CT Infobox, it is currently being looked into in what way the CT Infobox could further be developed.

For example, the institution of an 'info desk function' for the CT Infobox. For, because of the CT Infobox's overview of all relevant information, the CT Infobox is to be considered capable of answering many questions of the participating organisations. Of course, this will need to be done with due observance of the rules on the external provision of information.

Another development of the CT Infobox concerns the CT Infobox's analysis function. All the information present in the CT Infobox lends itself for a more thorough analysis in various forms, in addition to the already existing analysis taking place in the CT Infobox. Another example would be applying automated data analysis (data mining).

For this further analysis, analysts could be added to the CT Infobox. In line with this, the reference and analysis function of the CT Infobox could be separated from one another. As part of a pilot, this separation is already being applied.

Several other changes will also be carried through in the near future. For example the inclusion of the Immigration and Naturalisation Service in Article 60 WIV 2002, as one of the organisations authorised to carry out activities on behalf of the AIVD, prompted by the so-called Post-Madrid measures. This will formally guarantee the involvement of the Immigration and Naturalisation Service in the CT Infobox.

As to the developments regarding the CT Infobox the Committee observes that the CT Infobox, after a start-up period must now arrive at a consolidation of its tasks and

activities. With the current staffing and as long as the 'search shell' does not function, there is not much capacity to effect a (greater) expansion of tasks and activities, either. As to its tasks, the CT Infobox is useful for the investigative area of Islamist terrorism/radicalism, in which various services are active, which creates the need for the necessary coordination. The CT Infobox provides for this. On the other hand the CT Infobox is not or less useful for dealing with other forms of terrorism/radicalism in the CT Infobox, which had been occasionally suggested.

10 Conclusions and recommendations

10.1 The Committee considers it desirable that the CT Infobox is given an explicit statutory basis. The Committee is of the opinion that including the CT Infobox in the WIV 2002 is the best way to effect this.

The Committee recommends to create a statutory basis for the CT Infobox shortly (section 6.2).

The Committee recommends explaining the role and position of the participating organisations within the CT Infobox in further statutory provisions (section 6.2).

The Committee has established that the legal construction of the CT Infobox opted for promotes a leading position of the AIVD regarding the collaborative partnership. However, the Committee views such a construction (formally) as the only possibility for the AIVD to take part in such a collaborative partnership effectively.

It emerged that the AIVD all too readily assumed that the legal reality (the CT Infobox falls under the control of the AIVD) coincides with the actual reality (the CT Infobox is a collaborative partnership). As a result of this in the past the AIVD adopted too much of a leading role in the collaborative partnership.

In the Committee's opinion a further statutory arrangement should lay more emphasis on the collaboration within the CT Infobox.

The Committee considers it important that the Coordinating Consultation Body is given a statutory basis which should also pay attention to the role of the National Coordinator for Counter-terrorism. The Committee observes that the National Coordinator for Counter-terrorism is currently lacking such statutory basis.

From a formally legal perspective, it is not the Coordinating Consultation Body, but the AIVD which has control over the CT Infobox. The Committee recommends giving give the Coordinating Consultation Body a more well-defined position in any statutory provisions to be formulated (section 6.2).

The advisory procedure of the CT Infobox is complicated and may lead to a false picture of the facts. Further legislation, in the Committee's opinion, should provide for a more simple advisory procedure (section 6.2).

In further statutory provisions for the CT Infobox, in the Committee's opinion more clarity should be created about the role of the CT Infobox in (advising on) a person-specific approach.

Clarity should also be provided on any advice by the CT Infobox given to third parties (section 6.2).

The Committee recommends providing more clarity about the role of the Ministers of Defence and Justice, respectively, in respect of the CT Infobox (section 6.2).

The Committee is of the opinion that a further statutory basis for the CT Infobox would mean a clearer picture of the CT Infobox's actual role and the possibilities and impossibilities of the CT Infobox (section 6.2).

10.2 The criteria drawn up by the AIVD and the MIVD for reporting individuals to the CT Infobox are in line with the requirements laid down in the WIV 2002. The same applies to the criteria of the National Police Services Agency and those of the FIOD-ECD (section 4.1).

10.3 The Committee has established that the intake of an individual in the CT Infobox renders a diffuse picture. The Committee recommends stating in a well-motivated way why a person meets the criteria. This is also important with a view to removing individuals from the list of the CT Infobox (section 7.1).

When reporting a group of individuals in the Committee's opinion it would be advisable to describe what role a certain individual has in a group or organisation and why he meets the criteria (section 7.1).

The Committee recommends that arguments for the added value for including a person in the CT Infobox always be provided during the intake (section 7.1).

10.4 The Committee is of the opinion that not all individuals included in the CT Infobox meet the requirements set for inclusion. The Committee recommends to strictly apply the requirements for including individuals in the CT Infobox.

For clarity purposes and for reasons of coordination the Committee recommends creating a basis in the covenant for including individuals on the list of the CT Infobox (section 7.2).

- 10.5 The Committee recommends, based on previously formulated criteria, to critically consider whether the individuals included in the CT Infobox can remain on the list of the CT Infobox, or should be removed from it (section 7.2).
- 10.6 The Committee is of the opinion that the processing of (personal) data in the CT Infobox meets the requirements set to this, except for the processing of data of individuals wrongly included on the list.
This equally applies to the Article 60 officials who, pursuant to Article 14, paragraph 1, WIV 2002, are subject to the same requirements (section 7.3).
No unlimited exchange of information is involved.
- 10.7 The Committee considers the CT Infobox's procedure for rendering advice via Article 36 WIV 2002 the only statutory possibility for it. The Committee understands the objections some participants in the CT Infobox have against this procedure (section 5.1).
- 10.8 A lack of clarity exists regarding the role and responsibilities of the participating organisations in the person-specific approach ('disruption'). The Committee has established that the participants in the CT Infobox hold different view on this (section 5.5).

In the Committee's opinion it is sometimes complicated for the mayor within the present form of person-specific approach to render a well-considered opinion about (the proportionality of) the means (section 5.5).

The Committee is of the opinion that currently there is a lack of clarity about the moment on which a person-specific approach may be proceeded to.

The Committee has doubts, in the light of Article 8 ECHR and the case law of the European Court of Human Rights based on it, whether Article 2 of the Police Act 1993 offers a sufficient statutory basis on which this means can be based (section 5.5).

The Committee is of the opinion that the person-specific approach cannot exist without an explicit statutory basis in which the role and responsibilities of each participant are clearly described and which contains sufficiently clear requirements for applying the means (section 5.5).

- 10.9 The Committee is of the opinion that the CT Infobox could in reasonableness have rendered the advice it has given (section 7.4).
- 10.10 The Committee is of the opinion that the WIV 2002 does not offer the possibility to provide the Criminal Intelligence Units (AOT) with the list of names of persons of

the CT Infobox with the aim of actively interviewing them in order to obtain their sources (section 8.1).

10.11 It will need to be assessed in what way the provision of information and secrecy within the Coordination Consultation Terrorism (AOT) can best be formulated (section 8.2).

Adopted at the meeting of the Committee of 21 February 2007.

Supervisory report no. 17

On the assessment processes of the AIVD with respect to Mohammed B.

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Supervisory Report

1 Introduction

In the morning of 2 November 2004 the Dutch film director, television producer, columnist and opinion maker Theo van Gogh was brutally murdered in the Linnaeusstraat in Amsterdam. Bystanders were hit by flying bullets and the perpetrator shot at police officials with the intent to hit them. Shortly after these events Mohammed B. was arrested as a suspect and he was sentenced to life imprisonment on 26 July 2005.⁶⁷

On the day of the murder the Minister of the Interior and Kingdom Relations informed the Lower House by letter that Mohammed B.

“has emerged in current investigations of the AIVD into other persons. The information available from those investigations did not give any cause to assume that he was making preparations for violent actions.”⁶⁸

The fact that Mohammed B. was not unknown to the AIVD has given rise to many questions in the political and public domain. The Minister of the Interior and Kingdom Relations has responded to most questions.⁶⁹

During the General Political Debate in the Lower House on 22 September 2005, the Prime Minister promised that Parliament would receive a letter reflecting on the events.⁷⁰ This has resulted in an internal evaluation, the results of which have been laid down in a letter from the Minister of the Interior and Kingdom Relations to the Lower House of 18 December 2006.⁷¹

Various members of the Lower House have expressed doubts about the thoroughness of this internal evaluation.⁷² The lack of self-criticism, the difference in profiling the role of Mohammed B. within the Hofstad group by the Minister of the Interior and Kingdom Relations and/or the AIVD on the one hand, and the District Court in Rotterdam on the other hand, and the lack of answers to several questions, created a need within Parliament

⁶⁷ District Court in Amsterdam 26 July 2005, *LJN edition* AU0025. Neither the Public Prosecution Service, nor Mohammed B. have appealed against the judgment, making the judgment final and conclusive.

⁶⁸ *Parliamentary Documents II* 2004/05, 29 854, no. 1, p. 2.

⁶⁹ See *Parliamentary Documents* 29 854.

⁷⁰ *General Political Debate II*, 22 September 2005, p. 3-152.

⁷¹ *Parliamentary Documents II* 2006/07, 29 854, no. 18.

⁷² *Parliamentary Documents II* 2006/07, 29 854, no. 20.

for an independent investigation. On the instigation of the Lower House the Minister of the Interior and Kingdom Relations requested the Review Committee on the Intelligence and Security Services (hereinafter: the Committee) to conduct this investigation. The Committee responded positively to this request. The result of the Committee's investigation is presented in this report.

2 The investigation by the Committee

On 12 February 2007, the Committee received a written request from the Minister of the Interior and Kingdom Relations to instigate an investigation

“to verify and validate the assessment processes presented by me to the Lower House (including the parliamentary Committee for the Intelligence and Security Services) with respect to the level of attention paid by the AIVD to Mohammed B. and his actions, and the conclusion attached to that by me that it cannot reasonably be stated that the AIVD should have arrived at a different assessment with respect to Mohammed B.”

The explanation by the Minister in the letter of 12 February 2007 and the parliamentary debates after the murder of Theo van Gogh show that all questions that emerged in the debate can be reduced to three central questions.

Based on this, the Committee has formulated the following three investigative questions:

- A. What information did the AIVD have on Mohammed B. before 2 November 2004?
- B. Has the AIVD correctly characterised the role Mohammed B. played within the Hofstad group?
- C. Should the AIVD in reasonableness have made a different assessment in respect of the degree of attention given to Mohammed B.?

The Committee has been asked to look into the question whether the AIVD, based on the information available at the AIVD before 2 November 2004, could reasonably have arrived at the assessments made. The Committee has not considered in its investigation any information or data that became available after 2 November 2004 that cast a different light on the previously available information, as the AIVD did not have the availability of this information before 2 November 2004.

The assessment processes with respect to Mohammed B. are to be placed in a proper context in order to render a sound conclusion. Therefore, the Committee not only investigated the assessment processes with respect to Mohammed B., but also looked into the investigation conducted by the AIVD into the Hofstad group as a whole, as well as the working method opted for and the set of tasks the AIVD has been charged within the area of the fight against terrorism.

The investigation the Committee has been charged with does not involve an investigation into the protection and security of Theo van Gogh. Therefore, the Committee has confined its investigation to the question whether the AIVD had any specific information on any imminent attack on Theo van Gogh (or otherwise) by Mohammed B. or (another member of) the Hofstad group (see section 4.2).⁷³

In order to chart the relevant facts the Committee made use of the following sources of information:

- the AIVD's digital information systems;
- documents in the AIVD's safe and archives;
- a file put together by the AIVD⁷⁴;
- documents added to the file at the Committee's request;
- a chronology drawn up after 2 November 2004 by the Regional Intelligence Service of the police force Amsterdam-Amstelland (RID Amsterdam-Amstelland), including accompanying documents;
- digital information system of the RID Amsterdam-Amstelland;
- a chronology drawn up after 2 November 2004 by the police force Amsterdam-Amstelland;
- notes of the National Police Services Agency (KLPD);
- 38 interviews at senior management and operational level at the AIVD, the RID Amsterdam-Amstelland, the police force Amsterdam-Amstelland and the National Police Services Agency.

The Committee completed its investigation with its draft report of 19 December 2007. In accordance with Article 79, paragraph 2, Act on the Intelligence and Security Services 2002⁷⁵ the AIVD has been given the opportunity to give its response to the findings laid down in the supervisory report. The Committee received the Minister's response on 29 January 2008 and the supervisory report was adopted on 13 February 2008.

The supervisory report does not contain a secret appendix.

The report is composed as follows:

Chapter 3: The investigation into Islamist terrorism 2003/2004

In section 3.1 a brief description is provided of the fight against Islamist terrorism at the beginning of this century. At the moment of publication of this report, more than three

⁷³ For information about the embedding of the new system of protection and security see the report of the Administrative Evaluation Committee AIVD, *“De AIVD in verandering”* (The AIVD in transition), November 2004, p. 181-192.

⁷⁴ The file was provided by the AIVD to the Committee on 10 April 2007.

⁷⁵ Act on the Intelligence and Security Services 2002 (WIV 2002).

years have passed since the events of 2 November 2004. In order to review the assessment processes prior to the assassination of Theo van Gogh, it is important to place the facts in a proper historical perspective.

In section 3.2 one of the investigations on counter-terrorism is highlighted, namely the investigation into the Hofstad group.

Chapter 4: Information available to the AIVD

In section 4.1 the Committee explains which information with respect to Mohammed B. the AIVD possessed before 2 November 2004. In order to explain certain matters, the Committee will, at times, also pay attention to the question which information the AIVD did not have.

Section 4.2 deals with the question whether the AIVD had any specific knowledge of an imminent attack (on Van Gogh or otherwise) by Mohammed B. or (another member of) the Hofstad group.

Chapter 5: Characterisation of Mohammed B.'s role in the Hofstad group

Section 5.1 explains how the Minister of the Interior and Kingdom relations and the AIVD, respectively, characterised Mohammed B.'s role within the Hofstad group.

In section 5.2 the Committee sets out how, in the Committee's view, Mohammed B.'s role should have been characterised based on the information available at the time.

In the criminal proceedings, the District Court of Rotterdam characterised the role played by Mohammed B. differently than the Minister of the Interior and Kingdom Relations or the AIVD, respectively, did. Section 5.3 will discuss this difference. In this section, the Committee will also elaborate on a consideration made by the Court of Appeal in The Hague in the appeal proceedings against several fellow suspects of Mohammed B. in the Hofstad case.

Chapter 6: Level of attention for Mohammed B. and assessments made

Section 6.1 deals with the amount of attention given to Mohammed B. by the AIVD and the AIVD's motivation not to give Mohammed B. more attention.

In section 6.2 the Committee renders its conclusion on the assessments made.

One way to give someone attention was by placing this person on the so-called 'list of 150'. In the debate in the Lower House the question came to the fore several times why Mohammed B. had not been placed on this list. Section 6.3 will answer this question.

Chapter 7: Factors that influenced the AIVD investigation into the Hofstad group

In chapter 7 the Committee will consider several factors that influenced the investigation into the Hofstad group. These are information management (section 7.1), several personnel issues (section 7.2), cooperation with the RID Amsterdam-Amstelland (section 7.3) and internet research (section 7.4).

Chapter 8: Answering the investigative questions and other findings

The answers to the investigative questions are found in different sections of the investigative report. In section 8.1, the answers are brought together, providing a full overview per investigative question.

Section 8.2 provides a brief summary of the other findings.

3 The investigation into Islamist terrorism during the years 2003/2004

3.1 Combating Islamist terrorism in the 21st century up to 2 November 2004

After the large-scale attacks in the United States in September 2001, killing thousands of people, combating Islamist terrorism came high on the political agenda.

Long before the attacks in the United States, Islamist terrorism was one of the fields investigated by the AIVD. In its memorandum "Terrorism at the beginning of the 21st century" from April 2001, the National Security Service (BVD) wrote⁷⁶:

"Worldwide the threat emanating from religiously inspired terrorism, especially that which is committed by radical Muslims, is also to be taken seriously. The predictability of the place and target of these terrorists, is less clear. Existing cross-border contacts within transnational networks of kindred spirits allows them to strike in the most unexpected places."⁷⁷

After 11 September 2001, the AIVD set up a department in which investigations into Islamist terrorism were combined. Through internal reprioritisation, capacity and resources were mobilised to set up the Centre for Islamist Terrorism (CIT) in rapid response to the

⁷⁶ The National Security Service (BVD) was renamed into AIVD upon the entry into force of the WIV 2002 on 29 May 2002.

⁷⁷ National Security Service, "Terrorism at the beginning of the 21st century; Current Terrorism Threat in the Netherlands and positioning of the BVD", April 2001, published on www.AIVD.nl, p. 27.

attacks in the United States. The purpose of the CIT is to investigate specific networks and persons as well as to study phenomena in the area of Islamist terrorism.

An investigation conducted by the AIVD in 2002 showed not only that the threat of Islamist terrorism was increasingly directed at the Western world, but also that it was more and more coming from the inside. The AIVD has described this development and the possible consequences thereof in its memorandum "Recruitment for the Jihad in the Netherlands" from December 2002.

"The fact that the Mujahedeen established here were able to recruit new people for the Jihad, not only among the first generation of immigrants but in particular also among the second generation, means a further increase of the threat emanating from Islamist terrorism towards the West. The next stage would be attained when Muslims raised in the Western world are recruited, undergo their military and ideological training here and subsequently consider Europe as their front line, i.e. commit terrorist attacks here. We are already witnessing the first signs of this."⁷⁸

In the same memorandum the AIVD established that radicalisation processes cannot be viewed separately from terrorism. The investigation into radicalisation trends as the pre-stage or breeding ground for terrorist attacks has been performed by teams outside the CIT.

The involvement of young people raised and recruited in the Netherlands in Islamist terrorism was witnessed for example when on 13 January 2002 two recruits, boys of Moroccan origin, were killed in Kashmir.⁷⁹ After this, persons raised in the Netherlands were more often found to travel abroad for causes relating to Islamist terrorism, such as the journey to Chechnya of two Moroccan boys in January 2003, which they did not complete.⁸⁰

The attacks on commuter trains in Madrid on 11 March 2004, which took the lives of nearly 200 people, painfully showed that local networks consisting of people brought up in the Western world indeed (are able to) perform terrorist actions in the Western world. Spain's participation in the war in Iraq was named as an important motive for committing the attacks in Madrid.⁸¹ Consequently, a similar attack in the Netherlands no longer seemed unimaginable, and called for stepping up the investigation into Islamist terrorism. As after the attacks in the United States, after 11 March 2004 some shifts were made in the internal personal capacity in order to fill in the need for extra investigative capacity for CIT.

⁷⁸ General Intelligence and Security Service (AIVD), *"Recruiting in the Netherlands for the Jihad. From incident to trend"*, December 2002, published on www.AIVD.nl, p. 32.

⁷⁹ See for example Annual Report AIVD 2002, published on www.AIVD.nl, p. 21.

⁸⁰ See for example Annual Report AIVD 2003, published on www.AIVD.nl, p. 25.

⁸¹ See for example Annual Report AIVD 2004, published on www.AIVD.nl, p. 17-18.

Since the start of this century, the AIVD's workload has increased as a result of several developments.

Counter-terrorism should be approached in an international context, because many terrorist organisations operate internationally. The expansion of the investigation into Islamist terrorism therefore has created a more international focus of intelligence activities.

The AIVD has also increased its external focus. The AIVD is producing more products to inform the political community and citizens about the activities of the service⁸² and to present the results of its investigative work⁸³.

The provision of information to "partners in the chain" such as the Public Prosecution Service and the Immigration and Naturalisation Service (IND) has also increased substantially since the beginning of this century. Where in 2000 several dozens of official reports were produced by the AIVD, in 2004 this number had risen to several hundreds.⁸⁴ The workload of the AIVD also increased as a result of an expansion of its tasks. Upon the introduction of the Act on the Intelligence and Security Services 2002 (WIV 2002) the AIVD was charged with a new task, i.e. to conduct investigations in respect of other countries (the so-called foreign intelligence task, Article 6 paragraph 2 sub d WIV 2002). In 2004, the work load was further increased after, in anticipation of the statutory embedding of the task in the context of the new system for protection and security, reports of threats and threat assessments were produced insofar as this was possible under the statutory description of tasks as existent at the time.⁸⁵

After the attacks in the United States, the AIVD's staff gradually increased. This led to about 100 more staff members in 2002, approximately 30 people in 2003, and well over 100 staff members in 2004. A small percentage of extra staff came to work for the CIT. Any shortages in other task areas that came about because of reprioritisation after the attacks in the United States and Madrid, were filled first; in addition to this the AIVD also had to expand in other areas in order to (continue to) carry out the various tasks of the AIVD properly.

Theo van Gogh was murdered on 2 November 2004. By chance, the report of the Administrative Evaluation Committee AIVD (the Havermans Committee), which was written before 2 November 2004, was published in the same month.⁸⁶ One of the main conclusions of the report is that the AIVD, with the number and quality of staff available at the time, was unable to meet the expectations of the political community, the

⁸² For example public annual reports and year plans.

⁸³ For example the memorandums referred to in footnotes 11 and 12.

⁸⁴ See the Supervisory Report no. 9a on "*the investigation of the Review Committee into the official reports sent by the AIVD in the period from January 2004 to October 2005*", published on www.ctivd.nl.

⁸⁵ The legislation was announced on 20 June 2003 in the memorandum 'New Protection and Security System' (*Parliamentary Documents II* 2002/03, 28 974, no. 2, p 13) in response to the report of the Fact-finding Committee Security and Protection of Pim Fortuyn (Van den Haak Committee). In late 2006, the new task was embedded in the law (Bulletin of Acts and Decrees 2006, 574 of 28 November 2007).

⁸⁶ Administrative Evaluation Committee AIVD, "*The AIVD in transition*", November 2004.

government, the police and others. The Havermans Committee considered it necessary that the AIVD expand both in a quantitative and in a qualitative way:

“In order to perform all its tasks in a reliable and valuable way, it is necessary to expand the AIVD both in quantity and in quality. In particular in regard of the A-task and D-task, a substantial expansion needs to be realised shortly. Only in this way can the justified expectations be met and any relevant threats be addressed. The Committee emphasises that a quantitative growth of the AIVD is to go hand in hand with a development of its quality.”⁸⁷

The substantial expansion of AIVD staff, which started in particular in response to the recommendations of the Havermans Committee, therefore took place *after* the murder of Theo van Gogh.

In section 7.2 the Review Committee will enter into several staffing matters which will make clear that the investigation into the Hofstad group also suffered from a shortage of staff capacity.

3.2 The investigation into the Hofstad group

The Centre for Islamist Terrorism (CIT) of the AIVD was subdivided into several teams. Mid-2002, one of these teams identified a group of young people in Amsterdam that started to behave in an increasingly radical way. The investigation into this group started slowly. Mid-2003, the AIVD detected an increased activity within the group and the AIVD received more and more signs of an imminent attack. These signs prompted the AIVD to issue several official reports, after which in October 2003, commissioned by the Public Prosecution Service, five men from the group – from then on named the Hofstad group – were arrested. Due to a lack of concrete evidence four of them were released again within two weeks, and the fifth was extradited from the Netherlands.

As a result of the operation in October 2003 the Hofstad group was alerted to the AIVD’s attention for their group. The group became very aware of their safety and started operating more and more covertly. The AIVD’s access to information was consequently weakened.

In the course of 2004, the AIVD again obtained a better picture of the Hofstad group.

The Committee’s investigation took place in response to the events of 2 November 2004, and focused on one person from the Hofstad group, Mohammed B. The investigation into the Hofstad group as a whole was only covered in the report insofar as this is relevant in the context of the assessments made in relation to Mohammed B.

⁸⁷ Administrative Evaluation Committee AIVD, “*The AIVD in transition*”, November 2004, p. 202.

4 Information available to the AIVD

4.1 Information with respect to Mohammed B. available to the AIVD before 2 November 2004

The AIVD gradually received pieces of information on Mohammed B. The Committee has established that the AIVD has not produced a properly arranged personal file on Mohammed B. containing all data available to the AIVD.

However, there existed a P-card (personal card) in the AIVD's digital archiving system. This P-card however did not offer any functionality other than relating documents to Mohammed B. In order to take cognisance of all the available information on him, all documents would need to be opened separately and be searched for relevant passages. This P-card was not a personal file to analyse (the development of) this person. For example, it did not offer the possibility of collecting only the relevant passages from all documents in an orderly and systematic way, to put remarks and questions with the data that became available and to link the various events to one another. Moreover, the Committee has found that P-cards were often not brought up to date, including Mohammed B.'s P-card.

To obtain an overview of the data on Mohammed B. in possession of the AIVD, the Committee has collected the information on him that was available before 2 November 2004. Approximately 150 documents were found that contained his name, address, telephone number or one of his nicknames. Various documents may contain the same information, for example, if the transcription of a telephone conversation is laid down in an official report. The approximately 150 documents therefore do not contain 150 separate data.

The information the AIVD possessed before 2 November 2004 sketches the following picture.

Meetings at Mohammed B.'s house

Halfway through the year 2002, a group of men met at Marianne Philipsstraat 27 in Amsterdam. One of the men was Nouredine el F., who lived at this address. Inspection of the Municipal Records Database for this address in August 2002, showed that Mohammed B. was registered at this address. At that moment, Mohammed B. had not yet emerged in the AIVD's investigation, not even as occupant of the Marianne Philipsstraat 27.

In May 2003, the AIVD was aware that Nouredine el F. had moved. The AIVD had information that also after his removal, the meetings at Marianne Philipsstraat 27 continued. The group also met at other places. Until the autumn of 2003, the tenant of the house was referred to as 'a furthermore unknown Mohammed'. Around October 2003 - in addition to the Municipal Records Database extract from August 2002 - other information became available that demonstrated that Mohammed B. was the occupant of the house at the Marianne Philipsstraat 27.

Providing accommodation

In the period from 2002 up to and including 2004, various people from the Hofstad group, including Nouredine el F and Redouan al I. (“the Syrian”), whom the AIVD considers to be the spiritual leader of the group, found accommodation, over a shorter or longer period, in the house at the Marianne Philipsstraat 27 in Amsterdam.

Contacts with persons from the Hofstad group

The AIVD had information showing that from the summer of 2003 Mohammed B. (besides the meetings held at the Marianne Philipsstraat 27 in Amsterdam) had contact with various people from the Hofstad group. The data available showed among other things that Mohammed B. and another person collected the aforementioned “Syrian” in Germany.

Report on radicalisation of Mohammed B.

In September 2003, the AIVD received a report via the RID Amsterdam-Amstelland that Mohammed B. was behaving differently over the past period. Allegedly, he had become very radical.

A trip to Denmark

The information available showed that in October 2003 Mohammed B. had been in Denmark. The AIVD did not have any further information about this trip (such as the exact destination or purpose of the trip). The Committee considers it remarkable that in a period in which the AIVD paid so much attention to international contacts⁸⁸, the AIVD did not investigate Mohammed B.’s trip to Denmark.

Arrests of several persons from the Hofstad group

In October 2003, five people from the Hofstad group were arrested. Mohammed B. was not among them, but his home was searched because the persons arrested often stayed there. During the house search, a martyr’s testament in the name of Nouredine el F. was found.

One day after the arrests during a telephone conversation with Nouredine el F. Mohammed B. told Nouredine that he had better not let himself be seen and that it was a good thing that Nouredine had taken the documents with him.

Translating/writing the documents “The true Muslim” and “To catch a wolf”

In the spring of 2004, the AIVD was given two documents via different sources: “The true Muslim” and “To catch a wolf”. These documents were signed with the pseudonym Abu Zubair. In the spring of 2004, the AIVD received information that the pseudonym Abu Zubair was used by Mohammed B. Over four months later - in September 2004 - the AIVD learned that allegedly another person was behind the pseudonym. The Committee has

⁸⁸ For example with Abdelhamid A. from Spain, see *Parliamentary Documents II* 2004/05, 29 854, no. 3, p. 22.

established that before 2 November 2004, the AIVD failed to identify Mohammed B. as the translator and author of “The true Muslim” and “To catch a wolf”, respectively.

After the murder of Theo van Gogh it became publicly known that Mohammed B. used the pseudonym Abu Zubair. In order to answer the question whether before 2 November 2004, based on the data then available, the AIVD should have known that Mohammed B. was the same person as Abu Zubair, the Committee has listed the indications and contra-indications in the information available to the AIVD. The conclusion the Committee has drawn is that from the spring of 2004, the AIVD should have been aware that Mohammed B. used the pseudonym Abu Zubair and consequently had to be regarded as the translator of the document “The true Muslim” and the author of the document “To catch a wolf”. The following considerations play a role in this regard.

The indication in the spring of 2004 that Mohammed B. used the pseudonym Abu Zubair originated from a statement by a person from the Hofstad group. That Mohammed B. translated documents was confirmed by the fact that the AIVD, in the summer of 2004, received information that Mohammed B. was busy working on the translation of a book. In September 2004, an audio processor linked the name “Mohammed” to “Abu Zubaeyr”, whilst another audio processor found a link between Mohammed B. and “Abu Alzubair/Alzoubair” in two tap transcriptions in October 2004. A year before – in September 2003 – an audio processor had also referred to “a Mohammed (Abu Zubair)” who had contact with the previously mentioned Syrian. The Committee knows ex officio that the AIVD was aware that the (phonetic) script of Arab names is not invariably univocal and that the AIVD takes this into account in its investigations.

The contra-indication of September 2004, that another person was behind the pseudonym – unlike the indication from the spring of 2004 – originated in a communication by a person who did not belong to the Hofstad group. Moreover, this information was not confirmed by any other data.⁸⁹

For the contents of the two documents see section 5.2.

Before 2 November 2004, the AIVD had information that the two documents “The true Muslim” and “To catch a wolf”, translated and written, respectively, by Mohammed B., were distributed both within and outside the Hofstad group, among other things via the internet and email.

⁸⁹ The Committee has established that the AIVD had information in which a third person came up as a possible user of the pseudonym Abu Zubair. The Committee firmly believes that this contra-indication was not available to the team investigating the Hofstad group. This concerns very secret information of a team that conducted an investigation into radicalisation. This information was not recorded in the AIVD’s digital information systems, as a result of which the team investigating the Hofstad group had no automatic access to this information. None of the persons the Committee has spoken to, mentioned this contra-indication. The information was moreover not confirmed by any other information.

Before 2 November 2004, the AIVD did not have any other documents from Abu Zubair/Mohammed B. than the two documents referred to above.

Characterisation of Mohammed B.

In the spring of 2004, the AIVD received information about Mohammed B. that he was an important figure in the world of militant Muslims and that he had quite a lot of intellectual baggage.

Police information about Mohammed B.

In April 2004, a staff member of the AIVD checked, in the context of the investigation into the Hofstad group at the Regional Intelligence Service (RID) of the police force in Amsterdam-Amstelland, whether Mohammed B. was found in the police files. At that moment, the police files contained three cases still open, which involved Mohammed B:

- On 21 June 2000, Mohammed B. was arrested in connection with an act of violence in a public place (a fight in a café).
- On 24 June 2001, Mohammed B. was shown to behave in a threatening way towards police officers who visited Mohammed B.'s parental home.
- On 4 July 2001, Mohammed B. stuck a knife into a police officer's body and threw the knife at another police officer. Mohammed B. slapped and kicked the police officers.

The Committee has established that this information had not been recorded in the AIVD's digital information systems. However, it is an established fact that a member of the team investigating the Hofstad group had taken cognisance of the information, as a result of which the Committee believes that the information must have been known to the team.

On 2 May 2004, at the request of the AIVD, the RID Amsterdam-Amstelland once again checked the police files on Mohammed B. In an investigative journal of the AIVD it was reported that Mohammed B. did not turn up with any recent mutations.

After 2 May 2004, no more enquiries were carried out in the police files in respect of Mohammed B. - either at the request of the AIVD or independently - by the RID Amsterdam-Amstelland. The Committee has established that on 3 May 2004 a new mutation was included in the police register, namely that Mohammed B. had threatened a staff member of the Social Services. This information did not find its way to the AIVD.

Characterisation of Mohammed B. by Nouredine el F.

In the summer of 2004, Nouredine el F travelled to Portugal with several other persons. After his return to the Netherlands, Nouredine el F stated in a conversation with the KLPD and AIVD that over the recent period he had stayed in the Netherlands with a good friend of his, whom he had known for 2 to 3 years. This friend, named Mohammed B., believes in the ideology of Takfir and wanted to pursue jihad, to Chechnya. Nouredine stated that Mohammed B. often read in the Koran and had many video tapes about Chechnya. Nouredine el F referred to Mohammed B. as dangerous. Nouredine el F said that he had

taken a course with “the Syrian” together with Mohammed B. and several others. The course was provided, among other locations at Mohammed B.’s home in Amsterdam. According to Nouredine el F, “the Syrian” also spent the night at Mohammed B.’s. About the martyr’s testament in the name of Nouredine el F. (see above), Nouredine stated that the testament was written by Mohammed B.

During the conversation Nouredine el F exonerated himself several times. He said, for example, not to agree with the ideology of Takfir, not to believe in jihad, and to disapprove of the attacks in Madrid (of 11 March 2004).

In his letter of 10 November 2004 to the Lower House, the Minister of the Interior and Kingdom Relations announced that the AIVD had assessed Nouredine’s statement as

“incredible, because the spokesman himself was considered by the AIVD as very radical and had reasons to lead the attention away from himself, exonerating himself by putting the blame on others. Moreover, the experience of the AIVD in addressing persons who are a member of radical Islamist networks, teaches us that almost invariably, evading and misleading answers are given.”⁹⁰

The Committee is of the opinion that at the moment that Nouredine el F made the statement, the AIVD could reasonably have arrived at this assessment.

The Committee, however, observes that part of Nouredine el F’s statement about Mohammed B. is confirmed by information that was already available at that moment.⁹¹ In the Committee’s opinion, the assessment of the AIVD that information is unreliable does not imply that this information is to be set aside altogether. It would have been a good thing if the information qualified as unreliable at that moment, had been included in a personal file on Mohammed B., which would have allowed a re-evaluation of the value of the information at a later moment.

Arrest of Mohammed B. in public transport

In September 2004, Mohammed B. was arrested after behaving aggressively towards police officers after omitting to buy a ticket in public transport. Via the RID Amsterdam-Amstelland, the AIVD got hold of a copy of the documents which Mohammed B. was carrying at that moment, including a list of telephone numbers (among others of persons of the Hofstad group), a separate note with the telephone number of the leader of a terrorist organisation in another country, a financial overview with names of people of the Hofstad group and their monthly deposits, an inventory list, and notes for a speech.

⁹⁰ *Parliamentary Documents II* 2004/05, 29 854, no. 3, p. 29.

⁹¹ See the data available on Mohammed B. listed above in section 4.1.

The RID Amsterdam-Amstelland offered the AIVD to conduct an investigation into the documents that became available. The AIVD did not make use of this offer.

The RID Amsterdam-Amstelland reported to the AIVD on the state of affairs surrounding the arrest of Mohammed B. A later observation from a community police officer to the RID Amsterdam-Amstelland that he was very much alarmed by the change in behaviour of Mohammed B., was not passed on by the RID to the AIVD because the RID believed that the alarming facts had already been sufficiently covered in a previous report to the AIVD.

In section 7.3 the Committee will discuss the cooperation between the AIVD and the RID Amsterdam-Amstelland.

Involvement of Mohammed B. in Nouredine el F's Islamic wedding.

In October 2004, Nouredine el F and Malika C. married at an Islamic wedding ceremony. Before 2 November 2004, the AIVD had information that Mohammed B. was one of few people attending the wedding ceremony and that he was the one who had actually solemnised the marriage.

4.2 Information available on threats

The Committee has not come across any data showing that the AIVD had any specific knowledge (such as target, place or date) of an imminent attack on Theo van Gogh (or otherwise) by Mohammed B. or someone else from the Hofstad group.

The Committee has established that from October 2004 the AIVD had indications that the Hofstad group “was cooking up something”.

First, before 2 November 2004 the AIVD had information that a person who was in contact with persons from the Hofstad group, had announced in a chat room on the internet that a major action would take place after the elections⁹². The AIVD established in October 2004 that probably the same person had uttered threats towards Geert Wilders and Ayaan Hirsi Ali. This person became the subject of an investigation by the police force of Haaglanden. In addition to this, late October 2004 the AIVD received information that several persons from the Hofstad group were performing disturbing activities, which pointed to a preparation of an attack/attacks on an individual or on individuals. The AIVD was unaware whether Mohammed B. was involved in these activities.

Lastly, several persons from the Hofstad group got married or engaged around September and October 2004. The AIVD did not have any information that Mohammed B. was among these persons. An increase of the number of marriages in the Hofstad group had already

⁹² NB: On 2 November 2004 a new president was elected in the United States.

been one of the reasons for the AIVD to intensify the investigation into the group. To the AIVD, entering into an (Islamic) marriage is one of the indications that someone finds himself in an advanced stage of the radicalisation and recruitment process.

The signals prompted the AIVD, at the end of October 2004, to somewhat intensify the investigation into the Hofstad group. Before the AIVD could proceed to the actual effectuation of the deployment of (new) special powers, 2 November 2004, the day of the assassination of Theo van Gogh, arrived.

The Committee has established that the signs received did not prompt the AIVD to inform the Regional Intelligence Services of the police forces concerned about these signs, in order for the RIDs to be extra alert to any developments in their region. The Committee considers this a missed opportunity to make use of the RID's 'eyes and ears' in their specific regions.

See also section 7.3 about the cooperation between the AIVD and the RID Amsterdam-Amstelland.

The signs that were received in the autumn of 2004 confirmed that the AIVD's idea that there was a willingness among the group to commit a (terrorist) attack. The signs were not yet specific, and therefore the AIVD did not issue any official report to the National Public Prosecutor for Counter-terrorism (LOvJ).

A year earlier, in October 2003, in response to more specific signals, the AIVD issued official reports on five persons from the Hofstad group. The five persons were arrested on the order of the Public Prosecution Service. Four of them were released within two weeks. The fifth person was taken in aliens' detention and was expelled from the Netherlands. A side-effect of such an operation is that the AIVD's access to information is temporarily weakened, because targets are made aware that the focus of attention is on them. The Committee therefore believes that the AIVD could reasonably decide in the autumn of 2004 to wait with the external provision of information until the service had more specific proof of an imminent attack, also because the measures (that may be) taken in response to issuing an official report, may have far-reaching consequences for those involved.⁹⁵

Before 2 November 2004, the AIVD possessed information that people from the Hofstad group were of the opinion that certain publicly known persons should die. The Committee did not come across any data at the AIVD showing that Theo van Gogh was one of them.

⁹⁵ The Committee points to the political and public attention relating to a police raid in September 2004 at a Moroccan family at Bucheliusstraat in Utrecht. The AIVD had received specific indications that there was explosive material in the house and had issued an official report on this to the National Public Prosecutor for Counter-terrorism. After the raid, no explosive material was found to be present in the house.

In “To catch a wolf”, Mohammed B. too addressed individuals in threatening language, including Wilders and Verdonk (see section 5.2). He addressed the King of Morocco in a bloodthirsty manner:

“You must know (...), that it is my greatest desire to see how your chest is ripped open and see how your raw, ticking heart is torn out of your body and see how death is gripping your rotten soul, dragging it to the dungeons of Hell whilst you scream and struggle. You must know it is only a matter of time before the earth gulps down your power and kingdom.”⁹⁴

In 2004, the AIVD was aware of threats against Theo van Gogh⁹⁵, but did not have any information before 2 November 2004 that showed a link between the threats against Theo van Gogh and persons from the Hofstad group, including Mohammed B.

The Committee observes that a staff member of the AIVD, who was not on the team investigating the Hofstad group, besides his own work searched the internet trying to find information that was interesting for the AIVD. He copied a great number of internet pages placing them unprocessed in a file on the hard disk of his computer, after which he was able to study them. After 2 November 2004, this staff member found a forum discussion among the great many unprocessed and non-examined data, in which the question was raised whether persons abusing the prophet, like Hirsi Ali and Theo van Gogh, should be killed. A reply was placed on the forum that it is an obligation to do this. A person associated with the Hofstad group (not being Mohammed B.) in response to this wrote that this “will be insha’Allah clear”. Because the forum discussion did not emerge out of the bulk of information before 2 November 2004, in the Committee’s opinion this information should not be considered known to the AIVD before 2 November 2004.

In section 7.4 the internet searches by the AIVD are discussed in more detail.

⁹⁴ “*To catch a wolf*”, Abu Zubair (Mohammed B.), 2004.

⁹⁵ In two threat analyses to the National Coordinator Protection and Security of the Ministry of Justice casual observations were made in this context.

5 Characterisation of the role of Mohammed B. in the Hofstad Group

5.1 Characterisation of his role by the Minister of the Interior and Kingdom Relations and/or the AIVD

The Minister of the Interior and Kingdom Relations and/or the AIVD used various terminologies to characterise the role of Mohammed B. in the Hofstad group in the debate following the murder of Theo van Gogh. The Minister of the Interior and Kingdom Relations⁹⁶ positioned Mohammed B. as:

- a less known, secondary person;
- not an important actor/not an important player/not a key figure;
- a person who did not belong to the core of the Hofstad group, but a person who acts around the core;
- a person with a support role/a facilitator: he is used by others because he has accommodation and a car at his disposal;
- a person who did not exert a specific violent threat;
- a person who did not act as a leader in an executive sense;
- a person who was not a recruiter or a recruit for the international violent jihad;
- a person without a central role in the Hofstad network;
- a person with regard to whom no indications were present that he posed a risk.

The AIVD described Mohammed B., in the annual report 2004, as a person who was in the periphery of the Hofstad group.⁹⁷

The terminology which the Minister of the Interior and Kingdom Relations and/or the AIVD used was for a long time not defined in more detail in the debate. The Minister of the Interior and Kingdom Relations clarified his earlier conceptual framework with the following statement after the District Court in Amsterdam attributed a different position to Mohammed B. in March 2006 (see section 5.3):

“The information regarding the threat from jihadist terrorist networks held by the AIVD in the period before the murder of Mr Van Gogh, justified the fact that at that moment the service gave full priority to persons who exerted a specific terrorist threat. These persons had already taken steps towards violent jihad, among other things by travelling abroad to partake in the violent jihad or to attend terrorist training programmes abroad and to perform acts that indicated the possible preparation of attacks. At that time, such persons were considered by the AIVD to be part of ‘the hard core’ of such a network. Other persons also appeared in the investigations of the AIVD into jihadist terrorist

⁹⁶ See Parliamentary Documents 29 854.

⁹⁷ Annual report AIVD 2004, published on www.aivd.nl, p. 19.

networks, for example persons who fulfilled a facilitating or ideological role within these networks, but with regard to whom there were no specific indications that they were directly involved in the preparation of possible attacks. At that time, such persons were indicated by the AIVD as persons 'in the periphery' of such a network. However, this did not mean that such persons did not have an active and important role within the network. With regard to the person of Mohammed B. it meant for instance that he maintained many contacts with members of the Hofstad network and that he received members of the Hofstad network at his place of residence."⁹⁸

According to this passage, the direct involvement of a person in the preparation of possible attacks is the distinguishing criterion to classify this person either in the 'hard core' or the 'periphery of a network'. The Committee found the same way of thinking in the interviews with staff members of the AIVD: A person was rated among the hard core if there were indications that the person was prepared to die as a martyr (for example visiting a training camp, making a martyr's testament) or if the person performed a guiding role regarding the preparation of possible attacks.

The Committee is of the opinion that the chosen dichotomy - hard core versus periphery of the network - results in a lack of clarity and does not do justice to the actual situation. With the chosen distinguishing criterion - direct involvement in the preparation of possible attacks - a gap arises between the concepts 'the hard core' and 'the periphery' of the network. After all, there can be members in the group with an active and important role with regard to whom the serious suspicion has not (yet) arisen that they are directly involved in the preparation of possible attacks. According to the description of the Minister of the Interior and Kingdom Relations and/or the AIVD, these persons do not belong to the hard core, but to the periphery of the network. The Committee is of the opinion that members with an active and important role in a network cannot be said to merely belong to the periphery of that network.

5.2 Characterisation of his role by the Committee

The Committee has determined that before 2 November 2004 the AIVD did not have information from which a direct involvement of Mohammed B. in the preparation of possible attacks could be gathered. This would mean in the words of the Minister of the Interior and Kingdom Relations and/or the AIVD that Mohammed B. did not belong to the hard core of the Hofstad group, but to the periphery of the network.

In paragraph 4.1 the Committee charted the available information about Mohammed B.

⁹⁸ *Parliamentary Documents II* 2006/07, 29 854, no. 18, p. 3

held by the AIVD. This does not create the image of a person who was in the periphery of the Hofstad group.

The composition of the Hofstad group varied, however, several persons were permanent members of the group. Mohammed B. was one of the permanent members. Until the spring of 2004, he emerged as a person who had contact with persons from the Hofstad group and who made his house available for meetings and temporary accommodation. Thus far, this image fits the characterisation of the role as sketched by the Minister of the Interior and Kingdom Relations and/or the AIVD after the murder of Theo van Gogh.

In the spring of 2004 the AIVD received information that Mohammed B. had translated “De ware Moslim” (The true Muslim) and had written “To catch a wolf”. These documents were distributed within as well as outside of the Hofstad group.

“De ware Moslim” is a translation of the English “The true Muslim” of Dr Diyaaud-deen Al-Qudsee. In the document two fundamental conditions for entering the Islamic faith (Iemaan) are set forth. The first condition is the rejection of the unbelievers (Taghoet). The next passage shows the radical interpretation of this condition in the document:

“It is compulsory for a person to withdraw from the unbelievers and to fight them, dead or alive. So that the words of Laa ilaha illa Allah can be useful for a person and so that he can become a Muslim.

Withdrawing oneself from the unbelievers means: hate them, show them hostility, loathe them, have an aversion to them and fight them. If on the other hand a person is able to show Laa ilaha illa Allah and is loyal to the obligations such as: praying, fasting, zakat, hajj and jihad and incite people to the good and forbid the bad as well as other aspects of the religion; but he feels no hatred towards the enemies of the Islam, then he has become an unbeliever; even if he has loved but one of them and this person is a relative of his.”⁹⁹

The second condition to enter the Islamic faith – as dealt with in “De ware Moslim” – concerns the faith in Allah. This means, among other things, the acceptance that formulating laws, governing and judging are exclusively reserved to Allah. The koran and soenna show the way in this context.

In his foreword to “De ware Moslim”, Mohammed B. writes that he hopes that “this booklet (insha Allah) will be a reason for many people to return to the foundation of Islam.” Anticipating the comments from critics he writes:

“Let the lie and its followers frame these written words with concepts such as fundamentalist. Truly, that is exactly what we are. We (may Allah guide us in this), who

⁹⁹ “*De ware Moslim*”, Dr Diyaaud-deen Al-Qudsee, translated by Abu Zubair (Mohammed B.) in 2004.

strive to return to indeed the foundation of the whole existence: La ilaha illa Allah. We, who are accused that we brainwash the youth and the others; by Allah, nothing is less true: we have indeed washed ourselves from the lie and urge others to also choose for being brainwashed in this way. We, who are accused that we propagate violence (Jihad); by Allah, may Allah honour us to let the blood of the unjust flow. May Allah tear our bodies apart and pour our blood over the seed of fundamentalism (Tawheed).¹⁰⁰

Unlike “De ware Moslim”, the document “To catch a wolf” was written by Mohammed B. himself. The document begins with an account of a hunting technique used by Eskimos to kill wolves. By rubbing a knife with frozen blood a wolf is tempted to lick the knife. The wolf does not notice that he starts licking his own blood after cutting his tongue on the knife. Eventually the wolf will bleed to death.

Mohammed B. draws a parallel between this hunting technique and the way in which people are tempted by Western democracy. Submitting to temptations leads to people becoming addicted to their own wishes, as a result of which democratic leaders can exert power over them. Mohammed B. writes that some people have risen to free the whole world of “the deceitful democratic slavery”. He addressed the then Minister of the Interior and Kingdom Relations using the following words:

“Mr Remkes, we have indeed risen to urge and invite people to the Jihad. Why? Because we can no longer bear injustice. That the mosques also incite to Jihad is a gross lie! Why? Because these mosques have sold out on Islam and have hidden the truth behind their backs. You and the people who are politically responsible can manipulate the masses and say that we are terrorists and that we pose a threat to the Democratic judicial process; then you can make up all kinds of laws, which should reduce us to silence to then arrest us. Or you can link every Moroccan who says LA ILAHA ILLA ALLAH to Casablanca and leave the “dirty work” to the North-African snake; so that you can ease your false conscience. By Allah, with this policy you have indeed confirmed your own lies. If you make anything clear with your new policy, then it is that an authority should be created that is not linked to the wishes and paranoia of people. A fair policy that is independent of time, place and human thoughts and that cultivates enduring standards and values, which are embedded in humankind.”¹⁰¹

In the following passage of “To catch a wolf” Mohammed B. addressed Geert Wilders, after which he incited young people to jihad:

“It is indeed our goal to terrorise the lie and its followers with: LA ILAHA ILLA ALLAH. It is indeed our goal to use the sword of LA ILAHA ILLA ALLAH against the

¹⁰⁰ Foreword of Abu Zubair (Mohammed B.) of “*De ware Moslim*”, see previous note.

¹⁰¹ “*To catch a wolf*”, Abu Zubair (Mohammed B.), 2004.

lying cancerous tumour. It is indeed our goal to start a revolution with LA ILAHA ILLA ALLAH, which will overthrow your rotten democratic judicial process. And insha Allah we will bring you and your cronies, including Mrs Verdonk, to your knees before the Lord of the Worlds. And hereby I indeed make an appeal to recruit the youth for the Jihad: WAKE UP! LOOK AROUND YOU! THE MUSLIMS ARE BEING SLAUGHTERED AND YOU CANNOT DO ANYTHING AT ALL, BECAUSE YOU ARE BLEEDING TO DEATH YOURSELF! Free yourself! Come out of that coffee shop, come out of that bar, come out of that corner. Answer the appeal of LA ILAHA ILLA ALLAH. Join the caravan of Martyrs. Rise from your deep sleep, rise and shake off the dust of the humiliation. Rise and answer the appeal of HAJJA AL JIHAAD. (...)

With the mercy of Allah a generation will rise indeed who will pull up death as a shield around our Ummah with her own blood and souls.”¹⁰²

Mohammed B. expressed his expectation that it will be only a matter of time before Islam will be leading in the Netherlands.

In his final word he addressed the then Minister of Justice (Donner) and asked:

“What is your next legislative proposal to stop us terrorists?”

Both documents reflect a radical interpretation of Islam. Western society is rejected and Muslims are incited to jihad.¹⁰³ Mohammed B. counts himself – often by speaking in the first person plural (“us”) – among those who are regarded as terrorists. He directly addressed the then Minister of the Interior and Kingdom Relations, Remkes, being politically responsible for the AIVD and the then Minister of Justice, Donner, as legislator for terrorist offences.

In his foreword of “De ware Moslim”, Mohammed B. indicates that he tries to persuade people to return to the foundation of Islam, which implies, among other things, hating unbelievers, according to the translation of the document. Mohammed B. admits openly that he incites the youth to violent jihad (in: “To catch a wolf”). The latter appeal is made in general terms; a specific interpretation of violent jihad is omitted.

After the murder of Theo van Gogh the AIVD wrote the following about the influence of such texts in the annual report 2004:

“The local character of the Hofstad group is underlined by the absence of specific indications of international steering. (...) Also, the role of the Syrian spiritual leader of the

¹⁰² “To catch a wolf”, Abu Zubair (Mohammed B.), 2004.

¹⁰³ See for a similar explanation of documents of Mohammed B.: Prof Dr R. Peters, “De ideologische en religieuze ontwikkeling van Mohammed B: Deskundigenrapport in de strafzaak tegen Mohammed B. in opdracht van het Openbaar Ministerie opgesteld voor de arrondissementsrechtbank Amsterdam.” (The ideological and religious development of Mohammed B: Expert opinion in the criminal proceedings against Mohammed B, commissioned by the Public Prosecution Service for the District Court in Amsterdam), May 2005, www.sociosite.org/jihad/peters_rapport.pdf.

group does not indicate external steering. Although the role of this Syrian was very important for the ideological and spiritual development of the Hofstad group, he was not the only motor behind the radicalisation of young persons. The internet also played a very important role in that process. Many of the reasonings used in the letters of Mohammed B., have already circulated for quite some time in news groups and chat rooms and originate from international websites where you can find essays about 'true' Islam. Apart from that, the Hofstad group was not only ideologically fed via the internet, but also made contact this way with young persons open to the way of thinking of the group."¹⁰⁴

The documents "De ware Moslim" and "To catch a wolf" show no direct involvement of Mohammed B. in the preparation of possible attacks. The distributed writings do contribute to the (violent) ideological development of the Hofstad group and its surroundings and, moreover, persons, in particular young persons, are incited to violent jihad in "To catch a wolf". Therefore, the Committee is of the opinion that Mohammed B. played an active and important role in the Hofstad group by translating "De ware Moslim" and writing "To catch a wolf", and by distributing these documents.

That Mohammed B. held a clearly visible position within the Hofstad group is confirmed by the information that became available in the spring of 2004 that Mohammed B. is very important in the world of militant Muslims.

In addition, a financial overview was found with names of persons of the Hofstad group and their monthly financial contribution, among the documents that Mohammed B. carried with him during his arrest in September 2004. This is an indication that Mohammed B. fulfilled a role with regard to keeping track of the financial contributions of the group members.

The important role of Mohammed B. moreover emerges from the information that became available shortly before 2 November 2004 that Mohammed B. solemnised the (Islamic) marriage between Nouredine el F. and Malika C.

The violent tone in the documents drawn up by Mohammed B., also in combination with the available information from the police files that Mohammed B. had acted violently against the police a few years earlier and his attitude towards the police during his arrest in September 2004, create a picture of a person with a violent tendency.

The AIVD was not aware of the active and important role of Mohammed B. in the Hofstad group described above, and his violent image before the murder of Theo van Gogh, while the AIVD did possess the information from which this characterisation appears. The Committee is of the opinion that the AIVD underestimated the role of Mohammed B. in the Hofstad group.

¹⁰⁴ Annual report AIVD 2004, published on www.aivd.nl, p. 20.

5.3 Characterisation of his role in the criminal proceedings

Besides the criminal proceedings with respect to the events of 2 November 2004, Mohammed B. is also involved as a suspect in the criminal proceedings against persons of the Hofstad group (the so-called Hofstad case or Arles case), charged with participation in a criminal organisation and participation in a terrorist organisation. Mohammed B. was found guilty as charged.

The participation activities established by the District Court in Rotterdam regarding Mohammed B. concern¹⁰⁵:

1. organising or facilitating one or more meetings where hatred is incited or hatred is spread;
2. fulfilling an active and leading role as speaker or leader of conversations at meetings where hatred is incited or hatred is spread;
3. spreading the ideology of the group by word of mouth within or outside of the group;
4. spreading hatred-inciting/hatred-spreading and/or threatening writings/documents and/or video and/or audio material within or outside of the group;
5. having at one's disposal hatred-inciting/hatred-spreading and/or threatening writings/documents and/or video and/or audio material for distribution;
6. writing/drawing up/translating and/or editing hatred-inciting/hatred-spreading and/or threatening writings/documents and/or video and/or audio material for distribution;
7. showing hatred-inciting/hatred-spreading and/or threatening writings/documents and/or video and/or audio material.

With regard to the punishability of Mohammed B. the District Court observed:

“This suspect was the initiator and leader of the group of young men that he assembled around him. He was the one who received the others in his house. He was the one who acted as a teacher during the meetings. He was the one who translated and distributed tracts that glorify violence. He was the one who wrote and distributed tracts that glorify violence. He had an urge that apparently could not be stopped to get his violent ideas accepted by others.”¹⁰⁶

Neither the Public Prosecutor, nor Mohammed B. appealed the judgment, as a result of which the conviction of Mohammed B. in the Hofstad case became final and conclusive.

In the appeal of the Hofstad case against several fellow suspects of Mohammed B. the writings that Mohammed B. had translated or written played an important role in the considerations of the Court of Appeal with regard to the question whether the Hofstad

¹⁰⁵ District Court Rotterdam (located in The Hague) 10 March 2006, *IJN number AV5108*, consideration 213 or *public prosecutor's office number 10/600069-05*, p. 30.

¹⁰⁶ District Court Rotterdam (located in The Hague) 10 March 2006, *IJN number AV5108*, consideration 221 or *public prosecutor's office number 10/600069-05*, p. 31.

group had a shared ideology, which in the opinion of the Court of Appeal was not the case. The Court of Appeal did not explicitly get round to characterising the role of Mohammed B. in the Hofstad group. The Court of Appeal did observe with respect to the meetings in the house of Mohammed B. that when Redouan al I. (“the Syrian”) was absent, Mohammed B. usually took the lead, but it also occurred that Mohammed B. said nothing at all and that only the others present talked with one another. The Court of Appeal considered that Mohammed B. in this case did not behave as a teacher, unlike the Syrian.¹⁰⁷

Within criminal proceedings, judicial authorities generally have more information at their disposal than the AIVD has during the intelligence process. The difference between intelligence work and (criminal) investigation and prosecution was clearly expressed by the Minister of the Interior and Kingdom Relations in his letter of 18 December 2006 to the Lower House:

“There is a basic difference between intelligence work aimed at the future and the furnishing of proof afterwards in criminal cases. The Public Prosecutor acts when there is reason to assume that a criminal offence is involved. The focus is then primarily aimed at the past; from the hypothesis that a criminal offence is involved material with which that criminal offence can be proven and with which also can be proven who committed the criminal offence is looked for, if necessary intensively and protractedly. In intelligence investigations the focus is aimed at the future; intelligence work is aimed at assessing whether possible future threats to national security are involved based on incomplete and fragmented information. Thereby the emphasis is on making threats that are still unknown visible for the benefit of the competent authorities. Therefore it is unfair to afterwards compare conclusions drawn from lengthy and intensive criminal investigations with previously drawn conclusions from intelligence work aimed at the future. It is inevitable that the picture of the person Mohammed B. is more complete after months of intensive judicial investigation focused on his person after a serious criminal offence has been committed and in which context it was possible to use investigative means, than the picture that came across from the intelligence investigation on the eve of 2 November 2004.”¹⁰⁸

More information has become available in the Hofstad case by means of the criminal investigation than that which was at the AIVD’s disposal before 2 November 2004. For example, the information from the material from the house search was new, including the content of the computers of the suspects. Also the statements of suspects and witnesses were only available in the criminal proceedings and had not yet been available in the intelligence trajectory.

¹⁰⁷ Court of Appeal in The Hague, 23 January 2008, *LJN number* BC2576 (appeal in the criminal proceedings against Jason W. as a member of the Hofstad group), if printed on p. 21 just before the Court of Appeal reaches the judicial finding of fact. The Public Prosecutor has instituted appeal proceedings in cassation.

¹⁰⁸ *Parliamentary Documents II* 2006/07, 29 854, no. 18, p. 2.

The Committee has established that the AIVD did not have information that Mohammed B. carried out the participation activities 2 and 3 referred to above before 2 November 2004. With respect to the other participation activities (1, 4, 5, 6 and 7), the Committee has established that the AIVD did not have all documents and all video and audio material that was found at the house searches after 2 November 2004, which the District Court took into consideration in its assessment.

The Committee cannot conclude from the information in the AIVD's possession before 2 November 2004 that Mohammed B. was the leader of the group or that he was seen as such by the group.

The AIVD had information that Mohammed B. wrote or translated texts, but had no information that he provided the group with education in the ideology, other than by distributing the documents. Before 2 November 2004 the AIVD had no information that Mohammed B. acted as a teacher during the meetings referred to. Also before 2 November 2004, the AIVD had no information from which it appeared that Mohammed B. took the lead in these meetings.

All in all it is explainable that the judicial authorities made different assessments and reached different insights than the AIVD before 2 November 2004 because of the new and different information gathered after 2 November 2004.

6 Level of attention for Mohammed B. and assessments made

6.1 Level of attention for Mohammed B. and assessments made by the AIVD

The letter of 10 November 2004 of the Minister of BZK to the Lower House states the following about the level of attention for Mohammed B.:

“The AIVD continued to follow the activities of Mohammed B. also by deploying special means of intelligence as is shown by the chronology, although he received less attention during the investigation than the key figures in the Hofstad network.”¹⁰⁹

The level of attention for Mohammed B. was described in similar words in the written reply to questions from the Lower House on 17 January 2007:

¹⁰⁹ *Parliamentary documents II* 2004/05, 29 854, no. 3, page 6.

“Persons who did not pose a specific threat were watched to the extent possible, but in a different way and with a different intensity.”¹¹⁰

The Committee has established that Mohammed B. received relatively little attention from the AIVD. A personal file on Mohammed B. was not made and most intelligence on him did not become available through specific data collection on him, but rather as side-catch in investigations on other persons of the Hofstad group. On a few occasions, Mohammed B. himself was the subject of investigation. He was looked up in the information systems of the police, he was discussed in meetings with human sources and copies were made of the documents Mohammed B. had on him when he was arrested in September 2004.

At the end of the summer of 2004, the AIVD attempted to place a tap on the mobile telephone of Mohammed B. The motivation for the telephone tap with regard to Mohammed B. shows that the objective of using that special power was not to collect data on Mohammed B., but to obtain intelligence on other persons of the Hofstad group. Actually listening in to conversations never came to pass, as it turned out that Mohammed B. had no longer a telephone.

The Committee has established that, in its investigation into the Hofstad group the AIVD concentrated on persons in respect of whom there was a strong suspicion that they were directly involved in preparing a possible attack: persons who were prepared to die as a martyr or persons who fulfilled a steering role in connection with preparing possible attacks. Other persons received attention from the AIVD at most to obtain intelligence via them on the persons directly involved. As the AIVD did not have indications that Mohammed B. was directly involved in preparing any attacks, he was not a part of the focus of the investigation into the Hofstad group.

The Committee has established that there is a difference of perception within the AIVD as to whether Mohammed B. should have received more attention.

The interviews held by the Committee at team level have shown that the team felt the need to give more attention to persons in respect of whom there were no indications that they were directly involved in preparing any attacks, such as Mohammed B., but that this was impossible due to limited investigative capacity. There was (only) capacity available to closely watch several persons of the Hofstad group. Consequently, priorities had to be set in the investigation. The team opted to concentrate the investigation on persons in respect of whom there was a strong suspicion that they were directly involved in preparing possible attacks.

In interviews by the Committee at the level of directors and the executive level of the services, the Committee learnt that Mohammed B. would not have received more attention if there had been more capacity, since the team was solely investigating persons in respect of whom there was a strong suspicion that they were directly involved in preparing possible attacks.

¹¹⁰ *Parliamentary documents II* 2006/07, 29 854, no. 19, page 7.

6.2 Opinion of the Committee on the level of attention for Mohammed B. and assessments made

The Committee is of the opinion that the AIVD has a too limited interpretation of its tasks if it is stated – as do the directors and the executive level of the service – that investigation in the area of terrorism solely comprises the investigation into persons who are directly involved in preparing possible attacks. The (active) supporters of terrorists, who are aware of the group's intentions, may constitute a threat to national security as well, because the objectives pursued by these supporters – and possibly also their activities – constitute a threat to the continued existence of the system of democratic legal order, or to the security or other vital interests of the state (see the description of the tasks of the AIVD in Article 6, paragraph 2, opening words, and sub a of the Act on the Intelligence and Security Services 2002). Although supporters do not need to be *directly* involved in preparing any attacks in the specific sense, they do indeed contribute to the possibilities of preparing and carrying out an attack by means of their support activities. Moreover, it is important to also follow persons who are closely linked to the persons directly involved, as they are potential newcomers in the group of persons directly involved in preparing any attacks. The Committee, therefore, cannot concur with the directors and the executive level of the service in the idea that merely the persons who are directly involved would constitute the target group for the AIVD.

The objective of the Centre for Islamic Terrorism (CIT) at the AIVD is to fight the threat of Islamist terrorists that exists in the Netherlands (to prevent Islamist terrorist attacks and to prevent jihadists from travelling abroad). For this purpose, the AIVD attempts to obtain insight into the threat of Islamist terrorism and, if required, notifies third parties on that threat so as to disrupt possible activities of Islamist terrorists.

As appears from the team instructions from 2003 and 2004 of the team that was investigating the Hofstad group, a network-oriented approach was chosen at the time the CIT was established, in which context the focus may be (a limited number of) individual targets. The intensity of an investigation into an individual depends on the presumed threat or other relevance that is linked to such a target. The investigation in the area of terrorism focused on revealing networks. The external provision of data (via official reports, for example) was deemed of importance to be able to tackle a recognised threat of a network. The intended methods of the CIT were therefore organised in such a way that intelligence had to be collected in a structured way while focusing on building up a file against a specific target. The ideologies of Islamist terrorists were also designated by the AIVD as an area of attention in the investigation by the CIT.

In fighting Islamist terrorism, the AIVD has opted for a broad approach. This entails that “terrorism is not to be fought as an isolated phenomenon, but rather in combination with

contiguous factors of radicalisation and recruitment. Signals are to be recognised at an early stage so as to enable effective interventions.”¹¹¹ The teams of the AIVD investigating tendencies towards radicalisation therefore fulfil a major role in fighting Islamist terrorism. In 2003, the AIVD established that the transitions between radicalising, recruiting and ultimately carrying out terrorist attacks turn out to be overlapping areas that cannot easily be separated. The investigations into terrorism and radicalisation were, consequently, no longer strictly separable, as a result of which intensive coordination and collaboration between the teams investigating terrorism, on the one hand, and radicalisation, on the other, were deemed necessary to prevent issues being covered twice or, on the contrary, not at all.

The Committee has established that in connection with the investigation into the Hofstad group the actual practice was not in line with the intended procedures, as described above.

The attention paid was focused so strongly on some persons of the Hofstad group that one can hardly speak of a network-oriented approach. To the extent possible, the persons in respect of whom there was a strong suspicion that they were directly involved in preparing any attacks were monitored by means of special powers. The idea was that monitoring these persons would maximise the chance of recognising and disrupting any attacks in time. The Committee has established that the persons on whom the attention was focused indeed gave signals that justified the strong suspicion of direct involvement in preparing any attacks.

The Committee has established that the network as a whole had not been periodically analysed after the arrest of several persons in October 2003. The intelligence gathered by the AIVD confirmed the impression of the AIVD with regard to the persons on whom the team concentrated. As to other persons of the network, such as Mohammed B., clear signs of direct involvement in preparing any attacks were not received. The course taken was not periodically assessed to see whether the attention should be shifted to other persons. The Committee is of the opinion that, by not periodically examining the network as a whole, the AIVD has run the risk of not recognising developments within the group in time, for the AIVD was aware of the group’s intention, as a result of which it was conceivable that other persons within the group would also develop into persons directly involved in preparing (or even carrying out) any attacks.

The data collected in the investigation were not recorded systematically. No use was made of (personal) files, in which the intelligence on a person or network was assembled and categorised in a well-organised way. The digital information system hardly offered – as will

¹¹¹ E.S.M. Akerboom, (former) Director system of democratic legal order, “*Contraterrorisme in Nederland*” (Counter-terrorism in the Netherlands), in: Magazine for the police, June 2003 and published on www.aivd.nl.

also be discussed in paragraph 7.1 - any support in gaining insight into the existing intelligence on individual persons of the Hofstad group or on the network as a whole. Due to the lack of files, it is very difficult to assess data in close connection with one another and it is practically impossible to obtain an overall picture of an individual or of the network. It is impossible for the human mind to categorise and store the enormous quantity of information coming in at the AIVD without any aids.

There was no personal file on Mohammed B., either. This means that the information bit by bit gathered by the AIVD was predominantly assessed and weighed separately. An overall picture of Mohammed B. was therefore not obtained before 2 November 2004. It was only after the murder of Theo van Gogh that the AIVD assembled data on Mohammed B. in the factual reconstruction that was provided to the Lower House on 10 November 2004.¹¹²

The Committee is of the opinion that the AIVD did not have the ability nor the necessity to open a file on every person who could be linked in any way to the Hofstad group, for the Hofstad group was a fluid group of people. Some persons found a connection to the group for merely a short period of time and did not play an active or major role in the group. As Mohammed B. was one of the permanent members of the Hofstad group and, furthermore, played an active and major role in that group as from the spring of 2004, the Committee is of the opinion that - irrespective of the capacity issue - an intelligence and security service may be expected to monitor his activities and development, in any case by opening a personal file on him, so as to review on a periodical basis whether more attention for him was required and hence new priorities needed to be set in the investigation into the Hofstad group. Limited capacity should not and need not impede keeping sound files on persons in respect of whom that is required, for this does not relate to obtaining additional information, but merely relates to assembling in a orderly and well-organised manner information that is already collected and has to be processed anyhow. Properly organised information management will benefit the efficiency and effectiveness of the intelligence work.

Following a group's (developing) ideology is unequivocally a task of an intelligence and security service. The reports issued by the AIVD since the start of this century, have shown that the AIVD pays ample attention to this so as to be able to assess the threat posed by Islamist terrorism.¹¹³

The documents written and translated by Mohammed B. contain a violent ideology. In various ways, the documents reached both a team that was investigating radicalisation and the team

¹¹² *Parliamentary documents II 2004/05*, 29 854, no. 3.

¹¹³ See, for example, the reports "*Terrorisme aan het begin van de 21^e eeuw. Dreigingsbeeld en positionering BVD*" (Terrorism at the start of the 21st century. BVD threat assessment and positioning) (April 2001), "*Rekrutering in Nederland voor de jihad. Van Incident naar trend.*" (Recruitment in the Netherlands for the jihad. From incident to trend.) (December 2002) and "*Van dawa tot jihad. De diverse dreigingen van de radicale islam tegen de democratische rechtsorde.*" (From dawa to jihad. The various threats of radical Islam to the system of democratic legal order.) (December 2004), published on www.aivd.nl.

that was investigating the Hofstad group. The Committee has established that in the period preceding 2 November 2004, there was a difference of opinion within the AIVD as to the question who within the AIVD was responsible for investigating the (author of the) documents. A team investigating radicalisation noticed “To catch a wolf” among the other radical texts circulating in that period. Due to the threatening language in the document, the team considered it to be an alarming document, which had to be investigated. The team tried to find out the identity of Abu Zubair, but failed. Due to the threatening tone of the document, the team believed that the investigation into (the author of) the document fell within the task of the CIT and no longer under its own responsibilities of investigating inclinations towards radicalisation.

The Committee has established that the document “To catch a wolf” hardly received any attention within the team investigating the Hofstad group, for the team did not consider it to be its task to investigate such radical documents, as this was part of the investigation into radicalisation.

As explained above, the AIVD observed in 2003 that radicalisation, recruitment and ultimately carrying out terrorist attacks are overlapping areas and that they are to be seen in close connection with one another. Coordination and cooperation between the teams in the areas of radicalisation and terrorism were therefore deemed necessary. The Committee has established that coordination took place in mutual consultation at the workplace and was not structured by protocols. In the case of the documents of Abu Zubair (at that time not yet identified as Mohammed B.) the teams consulted each other at the workplace, but this did not result in one of the teams resuming the investigation into the (author of the) documents.

The investigation into a person such as Mohammed B. was consequently overlooked: due to the threatening tone of “To catch a wolf”, the author of the document no longer fell within the scope of the radicalisation investigation, but since he was not directly involved preparing any attacks, the team that was investigating the Hofstad group did not resume the investigation, either. The overlap in the phenomena of radicalisation, recruitment and carrying out attacks that was established by the AIVD had thus, at time, not yet resulted in a proper connection between the investigations into radicalisation and the investigation into terrorism.

The Committee is of the opinion that the investigation into the author of “To catch a wolf” belonged to the team that was investigating the Hofstad group. In paragraph 4.1, the Committee already stated that the team should have known, as from the spring of 2004, that the document was written by Mohammed B. The Committee finds it evident that an investigation into one and the same group or person is, in principle, carried out by the same team.

The Committee is of the opinion that attention of the AIVD for Mohammed B. was required because of his active and major role in the group (contributing to the (violent) ideological

development, inciting to violent jihad and possibly keeping records of the group members' financial contributions) and because of his violent image.

The Committee has established that the team that was investigating the Hofstad group felt the need to also pay attention to persons who were not directly involved in preparing any attacks. The Committee has established that the team (only) had the capacity to closely watch some persons of the Hofstad group, particularly by means of using special powers, as a result of which priorities had to be set in the investigation. The Committee is of the opinion that, with the available capacity, the team could in reasonableness make the assessment to closely watch those persons in respect of whom there was a strong suspicion that they were directly involved in preparing any attacks.

The Committee has established that Mohammed B. did not belong to these persons within this context. There was no information indicating that he was prepared to die as a martyr or that he fulfilled a steering role in preparing any attacks. In the opinion of the Committee, the team that was investigating the Hofstad group could therefore - compelled by the limited capacity available - in reasonableness decide that Mohammed B. did not belong to the persons who were closely watched by the AIVD (especially by deploying special powers). However, this does not imply that Mohammed B. did not require any attention whatsoever.

The Committee is of the opinion that the attention actually given to Mohammed B., as from the spring of 2004, was too limited in view of his active and major role in the group and his violent image. In the opinion of the Committee, the information that became available with regard to Mohammed B. should have been analysed on a periodical basis - irrespective of the question of capacity - so that his activities and development in the group could have been followed. Such an analysis can only be properly made if all of the information available on him is examined in close connection (personal file) and his role in the network as well as the roles of other persons in the network are defined on a periodical basis (network analysis). As stated above, this should not and need not be impeded as a result of limited capacity.

The Committee observes that if the AIVD had opened a personal file on Mohammed B., as the Committee has done by identifying all data that was available at the AIVD before 2 November 2004, there would still not have been a picture of a person in respect of whom there is a strong suspicion that he is directly involved in preparing any attacks. Nevertheless, the data available do show an increasing importance to pay attention to Mohammed B.

The Committee is also of the opinion that the AIVD could have made better use of the human resources and operational possibilities that the Amsterdam-Amstelland Regional Intelligence Service (RID) had to offer in that period to watch the activities of Mohammed B., for example, by requesting the RID to trace Mohammed B. in the police files on a periodical basis or by having the RID regularly obtain information from their contacts. In paragraph 7.3, the Committee discusses in more detail the cooperation between the AIVD and Amsterdam-Amstelland RID.

6.3 The 'list of 150'

During the debates in the Lower House following the killing of Theo van Gogh, a frequent question posed was why Mohammed B. was not included in the so-called list of 150 whereas he could be linked to the Hofstad group.

After the attacks in Madrid on 11 March 2004, it became clear that potential attackers were increasingly difficult to identify. Even persons who were seemingly not involved in terrorist activities and were engrossed in society turned out to be attackers. This observation made it more difficult for the AIVD to purposely investigate specific groups or persons. The exchange of information between government bodies was considered of greater importance so as to be swift in picking up signs indicating terrorist activities of a person. In a letter from the Minister of Justice and the Minister of the Interior and Kingdom Relations to the Lower House of 31 March 2004, the ambition was expressed to

“watch the group or persons deemed to be a risk - the AIVD estimates there is a fluctuating number (approximately one hundred and fifty persons) that can be linked in any way to terrorist activities or supporting terrorist activities - as long as this risk is considered to exist. This requires a more intensive collaboration between the AIVD and the police and an in-depth exchange of information between intelligence services and investigative services. Possible statutory impediments will be made known in the very near future. (...) The objective is to trace potential - national and international - terrorist attackers and to follow them as much as possible, disturb their activities where possible and, as soon as possible, proceed to arrest them.”¹¹⁴

This promise to the Lower House resulted in the formation of the Analytical Cell. This was a collaborative project of the Public Prosecutor, the police and the AIVD. By means of official reports, the AIVD made available to the Analytical Cell names of persons who could be linked to terrorism. Persons who had been brought to the attention of the Public Prosecutor or the police by the AIVD at an earlier stage, for example prior to the arrests of several persons of the Hofstad group in October 2003, were added to the Analytical Cell by the Public Prosecutor or the police. With effect from 1 July 2004, collaboration was intensified by establishing the Counter-Terrorism (CT) Infobox.¹¹⁵ The structuring of the collaborative project was given shape by an agreement that was undersigned by the

¹¹⁴ *Parliamentary documents II*, 2003/04, 27 925, no. 123, page 8.

¹¹⁵ See for further information on the CT Infobox the Committee's supervisory report that was adopted on 21 February 2007 with regard to the investigation into the CT Infobox (no. 12), which can be found on www.ctivd.nl and *Parliamentary documents II* 2006/07, 29 924, no. 16 (accompanying letter of the Minister of the Interior and Kingdom Relations).

participating services on 11 March 2005. On 2 November 2004, the CT Infobox was therefore still in a development stage.

Before the murder of Theo van Gogh, no criteria had been formulated on the basis of which someone could (or had to) be added to the Analytical Cell and/or the CT Infobox. The letter of 31 March 2004 states that it relates to persons who “could in any way be linked to terrorist activities or the support of these activities.” The letter of the Minister of Justice and the Minister of the Interior and Kingdom Relations to the Lower House of 10 September 2004 provides a brief explanation in this regard:

“In this context, this does not relate to persons who can be characterised as ‘hard core’ terrorists who constitute an acute danger or in respect of whom there are specific suspicions of involvement in a terrorism-related criminal offences; this relates to persons who in earlier or on-going investigations of the AIVD and the police came forward at any time as possible chains in terrorist networks.”¹¹⁶

The Committee has established that directly following the attacks in Madrid, the AIVD was under intense (political) pressure to make available the “150” names for application in the Analytical Cell/CT Infobox.¹¹⁷ Without clear criteria, it was assessed per individual whether the AIVD would add a person to the Analytical Cell. No special report was issued on Mohammed B. It cannot be traced whether an assessment was made in the first place whether or not to include Mohammed B. on the so-called list of 150 and what the possible motivation was to refrain from doing so.

The Committee states that Mohammed B. – based on the intelligence available at the AIVD before 2 November 2004 – was a suitable candidate to add to the Analytical Cell / CT Infobox. In respect of him, there was as yet no strong suspicion that he was directly involved in preparing any attacks – he was as yet not a ‘hard core’ terrorist –, but he did fulfil an active and major role in a group with terrorist intentions, as a result of which it was important to follow his activities and development.

In view of the fact that the chain partners did not have at their disposal the information on Mohammed B. that the AIVD had at its disposal, the AIVD was the appropriate service to include Mohammed B. on the list.

The Committee observes that including Mohammed B. on the so-called ‘list of 150’ before 2 November 2004 would in fact not have yielded much. At the time, the instrument was still insufficiently developed to (be able to) efficiently support counter-terrorism.

¹¹⁶ *Parliamentary documents II*, 2003/04, 29 754, no. 1, page 10.

¹¹⁷ Also see: Committee on the administrative evaluation of the AIVD, “*De AIVD in verandering*” (The AIVD in transformation), November 2004, pages 132-133.

7 Factors that influenced the AIVD investigation into the Hofstad Group

7.1 Information management

The AIVD's digital information system hardly offered support for obtaining insight into the existing information about individuals within the network or about the network as a whole. The system was not designed to keep files and the team investigating the Hofstad group did not provide for another manner of keeping dossiers.

The existing information system has been developed to allow the recording of documents in digital form. The Committee has established that retrieving documents in the system is time-consuming and not always effective. It occasionally happens that a document cannot be retrieved in the system. A ready knowledge of the material, understanding of the system and experience with using it are necessary in order to carry out successful searches.

The Committee has established that the information system hardly provided support for the operational investigation into the Hofstad group, due to the lack of any possibility to keep a dossier and due to the complicated search function.

In November 2004, the Administrative Evaluation Committee AIVD (the Havermans Committee) issued its report in which it concluded among other things:

“that the amount of information that the service is required to process has greatly increased over the past years. The process of computerisation has not kept pace with these developments. An effective, efficient and secure computerisation system is of crucial importance for an intelligence and security service. Moreover, this does not merely concern the information structures but also the actual information management in itself.”¹¹⁸

It was recommended that improvements be made to the information management and information structures.

“The initiatives taken must be resolutely continued. The accessibility of the information system should be increased. The Committee recommends as a priority that an internal committee be given the task of making suggestions for improving information management.”¹¹⁹

¹¹⁸ Administrative Evaluation Committee AIVD, “*De AIVD in verandering*” (the AIVD in transition), November 2004, p. 61-63.

¹¹⁹ Administrative Evaluation Committee AIVD, “*De AIVD in verandering*”, November 2004, p. 213.

It is of crucial importance for an intelligence and security service to have its information management in order, so that information is not merely collected, but can also be retrieved, viewed in its context and analysed. The Committee has established that, in 2003 and 2004, a good and thorough information management with respect to the investigation into the Hofstad group was lacking.

Ex officio, the Review Committee is familiar with the positive developments that have since occurred within the AIVD in the area of information management. Consequently, the Committee does not deem it necessary to make any recommendations in this regard.

7.2 Personnel issues

With respect to the personnel capacity, the Administrative Evaluation Committee AIVD (the Havermans Committee) stated the following in its report of November 2004:

“The Committee considers it particularly notable that the number of employees who have been deployed on the A task is still relatively low in comparison to the expectations existing in this domain.”¹²⁰

Furthermore, the Havermans Committee observed that there has been a relatively large and rapid increase of new personnel, as a result of which the AIVD had to train new people and show them the ropes in a relatively short time. “This places a heavy burden on the productivity of the service”, according to the Havermans Committee.¹²¹ The Havermans Committee also concluded in its report that preparing and training new personnel costs time and attention, two particular elements that were in short supply at that moment. The substantive quantitative growth advocated by the Havermans Committee was set into motion after this.

The Review Committee has established that the bottlenecks reported by the Havermans Committee were evident in the team carrying out the investigation into the Hofstad group. There was a severe shortage of personnel, the team regularly had to contend with personnel changes and there was an imbalance between the numbers of experienced and inexperienced staff.

The Committee has concluded that during 2003 and 2004 the team carrying out the investigation into the Hofstad group was burdened with two other large investigations.

¹²⁰ Administrative Evaluation Committee AIVD, “*De AIVD in verandering*”, November 2004, p. 69.

¹²¹ Administrative Evaluation Committee AIVD, “*De AIVD in verandering*”, November 2004, p. 70.

This meant that only part of the team could be occupied with the investigation into the Hofstad group, rather than the entire team. Several employees had to divide their attention between the various investigations.

The part of the team that was carrying out the investigation into the Hofstad group was supplemented with operators and audio processors from other teams.

By involving persons from various teams in one investigation, the horizontal communication was put under pressure. The Committee has found that there was no form of consultation in place that involved all individuals who were investigating the Hofstad group, for the additional operators and audio processors were not present at the weekly team meetings. Consultation and the exchange of information about the investigation into the Hofstad group primarily occurred in a bilateral context.

The Committee was surprised to find that team meetings took place on a weekly basis with employees who were occupied with various files and who shared this information with each other, whereas no consultation took place involving all the employees working on the same investigation. In the absence of a platform, it is difficult for employees to check with each other newly obtained information and insights. As a result, those involved in processing the information were under enormous pressure to ensure that everyone had the same information and insights at their disposal.

The Committee has established that the team carrying out the investigation into the Hofstad group often did not use the possibility of sharing written information by means of the weekly *Stand van Zaken* (state of affairs) - or by any other means.

The Committee has further established that a minimum number of audio processors and processors were involved in the investigation into the Hofstad group. In addition, the audio processors also frequently performed tasks for other investigations, in some cases for other teams, and processors were required to staff the front office¹²² for one out of every six weeks. The necessity of regularly having to shift their attention to other tasks disrupted the continuity where their own tasks were concerned. The work pressure was so high that it was almost impossible to catch up on their own file for the time lost.

As a result of the shortage of audio processors, it was not possible to listen to and transcribe all of the telephone taps. On the basis of specific criteria a selection was made as to which taps were to be listened to and/or transcribed.

As a result of the shortage of processors, the information collected could only be processed to a limited extent.

The Committee has established that for a number of months in the first half of 2004 only one permanent processor was assigned to the investigation into the Hofstad group. This

¹²² The front office is a desk where people from outside of the AIVD can submit questions, statements and requests for information.

processor had just entered into employment with the AIVD. Several employees who had a coordinating role in the team, had a basic insight into the investigation into the Hofstad group and were thus able to guide the processor in making operational choices. However, there were insufficient possibilities, also where capacity was concerned, to provide the new processor with adequate on-the-job training and support. As a consequence, the inexperienced processor had to make his own assessments regarding the value and importance of the collected information shortly after entering into employment with the AIVD.

A processor has a central and coordinating role in an investigation. He or she does not just process the incoming information, but also considers which information is still lacking, looks into the possibilities of obtaining that information and guides the AIVD's operational staff (including audio processors and operators) by indicating to them which information needs to be obtained.

The Committee considers it beyond comprehension that, in an investigation into persons in respect of whom the AIVD harboured serious suspicions that they were prepared to carry out an attack, the important coordinating role of a processor was, for several months, to a large extent assigned to a single, inexperienced processor, who frequently lacked adequate guidance.

The Committee has established that there were frequent personnel changes. These changes were often the result of usual job changes. Under normal circumstances, changes in personnel do not affect the continuity of an investigation. In a situation where dossiers are not kept and a well-functioning information system is lacking (see section 7.1), it is impossible to pass on the information already accumulated in a complete and structured form, as a result of which information and insight are lost. It is difficult for persons newly involved in the investigation to gain an overview of the tasks already executed and the state of affairs of the investigation.

The Committee has established that the audio processor who was arrested in September 2004 for unlawfully divulging state secrets had been involved for almost a year in the investigation into the Hofstad group as a permanent audio processor. After the murder of Theo van Gogh, an AIVD document was found in Mohammed B.'s house. This document was in possession of Achmed H., a member of the Hofstad group who was living at the house at Marianne Philipsstraat 27 in Amsterdam during this period.

On 1 March 2007, the audio processor was sentenced in appeal proceedings by the Court of Appeal in The Hague to four years' imprisonment for divulging state secrets, during a relatively short period, to persons who were not authorised to be privy to this information.¹²³ The Committee has established that it is not possible to determine whether the behaviour

¹²³ Court of Appeal in The Hague 1 March 2007, *LJN number AZ9644*.

of the audio processor had any effect on the AIVD investigation into the Hofstad group, including Mohammed B. However, this possibility cannot be excluded, either.¹²⁴

The team investigating the Hofstad group continuously requested extra capacity. The (former) directors of the Democratic Legal Order department also indicated to the management of the AIVD on several occasions that more capacity needed to be made available for the investigation in the area of terrorism.

Following the attacks in the United States in September 2001 a restructuring of priorities took place within the AIVD, as a result of which more FTEs could be allocated to the investigations into areas of radicalisation and terrorism. This internal restructuring of priorities resulted in a staff shortage as far as investigations into other areas of interest to the AIVD were concerned. In the period following the restructuring of priorities attempts were made to compensate for this shortage. Accordingly, extra capacity that became available was divided over the entire service.

Following the attacks in Madrid in March 2004 an internal restructuring of priorities took place once again in favour of the investigations concerned with counter-terrorism. Before 2 November 2004 this resulted in a slight expansion of the team carrying out the investigation into the Hofstad group.

The Committee has established that the limited capacity available in combination with the limited experience at the disposal of new employees had an effect upon the intensity of the investigation and the number of individuals who could be kept under close observation.

The Committee has established that within the AIVD the terrorism-related investigations were given high priority following the attacks in the United States in September 2001 and the attacks in Madrid in March 2004. The Committee considers it notable that this internal defining of priorities did not result in more staff being assigned to the investigations carried out by the CIT (Centre for Islamic Terrorism) of the AIVD, including the investigation into the Hofstad group.

7.3 Cooperation with the RID Amsterdam-Amstelland

Following the murder of Theo van Gogh, the cooperation between the AIVD and the Regional Intelligence Service (RID) of the Amsterdam-Amstelland police force also came under discussion.

¹²⁴ See *Appendix II* 2005/06, 25 January 2006, p. 1639.

The Review Committee recently carried out an investigation into the cooperation between the AIVD and the Regional Intelligence Services and the Royal Netherlands Military Constabulary respectively, in which all aspects of the cooperation were discussed. For an overview of the conclusions and recommendations the Committee refers to the supervisory report issued on the subject.¹²⁵

In the context of the present investigation, the Committee has focused on the cooperation with the RID of the Amsterdam-Amstelland police force, insofar as this cooperation is related to the investigation into the Hofstad group prior to 2 November 2004.

Pursuant to Article 60 paragraphs 1 and 2 of the Act on the Intelligence and Security Services 2002 (WIV 2002) tasks may be executed for the benefit of the AIVD by public servants from the police force assigned for this purpose by the chief constable. These public servants are joined in a Regional Intelligence Service (RID) per police force. Besides tasks for the AIVD, the RID also executes intelligence tasks related to public order for the benefit of the mayor. The tasks executed by the RID for the AIVD's benefit are executed under the responsibility of the Minister of the Interior and Kingdom Relations, in accordance with the instructions of the head of the AIVD (Article 60 paragraph 3 Act on the WIV 2002). The RID does not have the authority to perform tasks on the basis of Article 60 WIV 2002 that have not been initiated at the AIVD's request.

Pursuant to Article 62 WIV 2002 police officials in the execution of their policing tasks are obliged to notify the chief constable if they obtain information that could be of interest to the AIVD. According to the Explanatory Memorandum to the WIV 2002, this not only concerns the duty to provide relevant information at the individual's own initiative, but also applies to the duty to report information from police files if the AIVD has requested this in the context of carrying out its tasks.¹²⁶ The duty to provide information of course also applies to police officials employed by the RID. RID employees have access to police information and also gather police information themselves on the basis of tasks related to public order.

The RID is an extension of the AIVD in the community. By using the 'eyes and ears' of the RID, the AIVD can extend its view of the situation and events that take place in the region. The RID has to alert the AIVD to noteworthy matters in the region. In addition, the RID can also be deployed specifically for investigations of the AIVD, for example to investigate operational possibilities within the region, to make administrative inquiries into persons residing in the region, or by interviewing its contacts in the region.

¹²⁵ Supervisory report no. 16, on "*the investigation into the cooperation between the AIVD and the Regional Intelligence Services and the Royal Netherlands Military Constabulary respectively*", published on www.ctivd.nl.

¹²⁶ *Parliamentary Documents II* 1997/98, 25 877, no. 3 p. 75.

The Committee has established that in the main the RID Amsterdam-Amstelland was informed by the AIVD about the investigation into the Hofstad group. Shortly before the arrests of several persons from the Hofstad group in October 2003, the provision of information was of a more detailed and comprehensive nature, for the last time on 4 November 2003. After that the information provided to the RID was of a fragmentary nature.

After 4 November 2003, the RID Amsterdam-Amstelland requested the AIVD several times to provide an overview of the investigation into the Hofstad group. Before 2 November 2004 this did not result in the RID being provided with a comprehensive overview. The Committee observes that the lack of a proper overview with the AIVD - NB: no personal files or periodic network analyses - was not helpful in providing structured information to the RID. The Committee has established that before 2 November 2004 there were - and still are - too high expectations with the RID Amsterdam-Amstelland as to the access to information of the AIVD with respect to the Hofstad group.

Only to a limited extent did the AIVD involve the RID Amsterdam-Amstelland in its investigation into the Hofstad group. The RID was, for example, only incidentally requested to make administrative inquiries in police files about persons involved in the Hofstad group. The AIVD and the RID also jointly interviewed several human sources.

The Committee is of the opinion that the AIVD, with respect to the investigation into the Hofstad group, could have made better use of the human resources and operational possibilities that the RID Amsterdam-Amstelland had to offer in that period. The involvement of the RID was of an incidental nature and was usually focused on a specific request. The RID was not called in to permanently monitor specific persons, places or activities, for example by periodically making administrative inquiries about persons or by regularly obtaining information from contacts of the RID¹²⁷. Such deployment of the RID would specifically have had an added value, because the AIVD, due to its limited capacity, was able to closely watch only a limited number of persons. For example, the AIVD could have requested the RID Amsterdam-Amstelland to periodically trace Mohammed B. in the police files. In that case, the mutation in the police file of 3 May 2004 about the threatening of a staff member of the Social Services (see section 4.1), would indeed have been made available to the AIVD.

Because the AIVD no longer provided the RID Amsterdam-Amstelland with a comprehensive overview of the investigation into the Hofstad group after October 2003, and failed to structurally involve the RID in the investigation, the RID after some time was no longer fully abreast of the things (persons, places, activities etc.) in which the AIVD was particularly interested after the arrests in October 2003. Due to a lack of context, the RID was hindered in carrying out its function as 'eyes and ears' in the region and, in effect, not

¹²⁷ Contacts are for example community police officers or other police officers.

competent under Article 60 WIV 2002, other than responding to an incidental request of the AIVD, to conduct an investigation into the Hofstad group. In the opinion of the Committee the circumstance that Article 62 WIV 2002 also obliges the RID to provide the AIVD with any relevant information, may not be interpreted so broadly as to mean that the RID, without steering from the AIVD, can conduct an investigation in the police files into all kinds of things that have at some time been brought to the attention of the RID (for example by a request to make administrative enquiries into a specific person or as a topic of discussion in the context of a joint operation).

The lack of a comprehensive overview, moreover, made it difficult to be a valuable interlocutor in conversations with joint human sources. The Committee has established that in one joint operation the reports of meetings made by the AIVD operator were only provided to the RID operator by way of exception. This does not increase the possibilities for the RID to actively participate in the operation, nor to a useful cooperation. It is standard procedure to share reports of meetings of joint operations with the RID. The Committee has been unable to establish any reason why this procedure was deviated from in the present operation.

Chapter 4 of the report already made several references to the cooperation between the AIVD and the RID Amsterdam-Amstelland.

As described in section 4.1, the RID offered to examine in more detail the documents found during the arrest of Mohammed B. in September 2004. The AIVD rejected this offer. The Committee has been unable to establish that the AIVD itself made a thorough analysis of the documents. The Committee considers it a missed opportunity that the AIVD rejected the RID's offer, all the more in view of the limited capacity with the AIVD, as a result of which the AIVD itself was able to pay only limited attention to Mohammed B. In this case the AIVD could have made better use of the RID Amsterdam-Amstelland.

In section 4.2 the Committee has already considered it a missed opportunity that the warnings in October 2004 that the Hofstad group "was involved in something" were not shared with the Regional Intelligence Services of the police forces concerned. Without it costing the AIVD any capacity, the AIVD could have requested, for example the RID Amsterdam-Amstelland to be extra alert to anything noteworthy in Amsterdam, where several persons from the Hofstad group, among whom Mohammed B., resided and the group organised meetings on a regular basis.

Lastly, section 4.1 states that after the arrest of Mohammed B. in public transport in September 2004 a later report by a community police officer to the RID Amsterdam-Amstelland that he was very much alarmed by the changed behaviour of Mohammed B., was not passed on by the RID to the AIVD, because the RID believed that the alarming facts had already been sufficiently covered in the previous report on the arrest. The Committee has established that the report of

the community police officer makes the previous report of the RID more specific. The Committee is of the opinion that it would have been better if the RID had passed on the report of the community police officer to the AIVD to provide the AIVD with a fuller picture of Mohammed B.

The Committee has established that the cooperation between the AIVD and the RID Amsterdam-Amstelland concerning the investigation into the Hofstad group in 2004 was typical for the cooperation between the AIVD and various Regional Intelligence Services at the time, as described by the Committee in the supervisory report on the cooperation referred to above. There was insufficient operational steering, the provision of information was poor, and the cooperation to a large extent depended on personal relationships between individual employees.

Over the past years both sides have made serious efforts to improve the cooperation between the AIVD and the Regional Intelligence Services. For an overview of the current state of affairs, the Committee refers to the above supervisory report, in which the Committee made several recommendations to further improve the cooperation.¹²⁸

7.4 Internet research

The Committee has established that before 2 November 2004 little internet research in connection with the investigation into the Hofstad group was conducted. The AIVD hardly had any perception of the activities of persons from the Hofstad group on the internet.

During that period, internet research had not been given a specific place within the operational process of the AIVD, and the technical possibilities to give shape to internet research were not yet fully developed. Insofar as information from the internet became available, it was found difficult to assess the information from this open source. The realisation that the internet contained valuable information for the AIVD was growing. In November 2004 the Havermans Committee reported on this as follows:

“The internet has become an important medium within the communities investigated by the AIVD. Young people tend to express their feelings via various web fora; recruiters operate via the internet and large amounts of information can be disseminated internationally very quickly. The amount of information is too extensive for the AIVD to follow and process comprehensively. As a result of these developments the AIVD

¹²⁸ Supervisory report no. 16, on *“the investigation into the cooperation between the AIVD and the Regional Intelligence Services and the Royal Netherlands Military Constabulary respectively”*, published on www.ctivd.nl.

focuses, among other things, on the (legal) possibilities of retrieving the identity behind virtual persons.¹²⁹

Also among the persons involved in the investigation into the Hofstad group there was an increasing awareness of the necessity to conduct internet research. However, the shortage of human resources limited the possibilities to extend the deployment of means of intelligence: one investigative method needed to be abandoned in order to use a new one. Abandoning a classic method of intelligence was considered undesirable, which resulted in there being little investigative capacity for internet research. In the late summer of 2004, several initiatives were started to obtain a better picture of the internet activities.

The Committee is of the opinion that an intelligence and security service may be expected to closely monitor the development of new means of communication and to (rapidly) take advantage of such developments. From the late 1990s, the use of the internet has grown strongly. The use of this source of information in the context of the operational intelligence process appears to lag behind the rapid ascendancy of this means of communication. The Committee has established, however, that there was an increasing awareness within the AIVD that internet research was necessary. Slowly, projects have been initiated to incorporate internet research with the AIVD. Before 2 November 2004, this had not yet resulted in a (proper) information position on the internet within the context of the investigation into the Hofstad group.

8 Answering the investigative questions and other findings

8.1 Answering the investigative questions

Answering investigative question A

What information did the AIVD possess on Mohammed B. before 2 November 2004?

The Committee has established that before 2 November 2004 the AIVD had not created a personal file on Mohammed B in which all the information available to the AIVD was collected in a structured and orderly way. This means that most of the information on Mohammed B. that gradually reached the AIVD, was assessed and weighed in isolation. The AIVD did not have a full picture of Mohammed B. before 2 November 2004.

In chapter 4, the Committee has charted the information available to the AIVD before 2 November 2004.

¹²⁹ Administrative Evaluation Committee AIVD, “*De AIVD in verandering*”, November 2004, p. 139.

The overview shows, on the one hand, that the AIVD had more information on Mohammed B. than the service acknowledged before 2 November 2004, in particular that Mohammed B. was the translator and author of “The true Muslim” and “To catch a wolf”, respectively, which documents were distributed within and outside the Hofstad group.

On the other hand, the overview shows that before 2 November 2004 the AIVD had less information on Mohammed B. than was assumed outside of the AIVD, including the RID Amsterdam-Amstelland.

The Committee has not found any information that shows that before 2 November 2004 the AIVD had any specific knowledge (such as target, place or date) of any imminent attack on Theo van Gogh by Mohammed B.

Answering investigative question B

Has the AIVD properly characterised Mohammed B.'s role in the Hofstad group?

After the events of 2 November 2004 the Minister of the Interior and Kingdom Relations and the AIVD, respectively, divided the persons involved in the Hofstad group into two categories. Persons with respect to whom there were serious suspicions of their direct involvement in the preparation of any attacks – either because there were indications that they were prepared to become a martyr or because of their steering role in the preparations – were considered as belonging to the hard core. Persons with respect to whom such suspicions did not exist, were characterised as persons acting in the periphery of the network. Mohammed B. was considered to belong to the periphery of the network.

In the Committee’s opinion the division opted for creates a lack of clarity and does not do justice to the actual situation. For with the distinctive criterion chosen – immediate involvement in the preparation of any attacks – a gap is created between the notions of ‘hard core’ and ‘periphery of the network’. In the Committee’s opinion, persons who have an active and important role in the group, but against whom there is no (or not yet a) serious suspicion that these persons are involved in the preparations of any attacks, cannot be considered as acting in the periphery of the network.

The Committee has established that before 2 November 2004, the AIVD did not possess any information from which it may be concluded that Mohammed B. had any direct involvement in the preparation of any attacks. No signs were received to the effect that he would be prepared to be a martyr or that he would have any steering role in the preparation of an attack.

Based on the information available to the AIVD before 2 November 2004, Mohammed B. did come forward as an active, important member of the Hofstad group because of the fact that he had translated documents (“The true Muslim”) as well as had written them (“To catch a wolf”) which documents were distributed both within and outside the Hofstad

group. By distributing these documents, Mohammed B. contributed to the (violent) ideological development of the Hofstad group and his environment. Moreover, with the text “To catch a wolf” he incited young people to violent jihad.

The active and important role of Mohammed B. also becomes apparent from the information that became available in the spring of 2004 that Mohammed B. was a very important figure in the world of militant Muslims and from the information available to the AIVD before 2 November 2004 that Mohammed B. had solemnised the marriage of a person from the Hofstad group (an Islamic wedding). Moreover, before 2 November 2004, the AIVD had an indication that Mohammed B. played a role in keeping account of the financial contributions made by group members.

The violent tone in the documents prepared by Mohammed B., also in combination with the information available to the AIVD before 2 November 2004 from police files, that Mohammed B. had already behaved violently towards the police several years earlier, and his behaviour towards the police during his arrest in September 2004, also create a picture of a person with a violent character.

The active and important role of Mohammed B. in the Hofstad group and his violent character were not recognised by the AIVD before the events of 2 November 2004, whereas the AIVD did have information showing such a characterization. In the Committee’s opinion, the AIVD has underestimated the role of Mohammed B. in the Hofstad group.

The Committee has established that before 2 November 2004, the AIVD did not have the information that characterises Mohammed B. as a leader and teacher, as the District Court in Rotterdam considered in the Hofstad case, or as a person who took the lead in the meetings at the home referred to, as was considered by the Court of Appeal in The Hague in appeal proceedings against fellow suspects of Mohammed B. The Committee has established that the judicial bodies in the criminal proceedings against the Hofstad group had more information than was available to the AIVD before 2 November 2004 in the intelligence trajectory. All in all, it is explicable that the judicial bodies, as a result of the new information, i.e. the information collected after 2 November 2004, made different assessments and obtained different insights than the AIVD did before 2 November 2004.

Answering investigative question C

Should the AIVD in reasonableness have made a different assessment in respect of the degree of attention given to Mohammed B.?

The Committee is of the opinion that attention from the AIVD for Mohammed B. was desirable because of his active and important role in the group and because of his violent personality.

The Committee has established that the team that conducted an investigation into the Hofstad group (only) had the capacity to closely follow a few people from the Hofstad group (in particular by deploying special powers). As a result, priorities had to be made within the investigation. In the Committee's opinion, the AIVD could reasonably have decided to closely follow those persons with regard to whom there existed the serious suspicion that they were directly involved in the preparation of possible attacks. Mohammed B. did not belong to these persons in this context.

In the Committee's opinion, the AIVD, compelled by the available capacity, could reasonably have decided that Mohammed B. was not among the persons to be closely watched (in particular by deploying special powers) by the AIVD.

However, this does not imply that Mohammed B. did not need to be given any attention at all. In the Committee's opinion, the attention actually given to Mohammed B. from the spring of 2004 onwards, was too meagre, considering his active and important role in the Hofstad group and his violent character.

The information that became available on Mohammed B., in the Committee's opinion, should have been analysed periodically, in order that his activities and development in the group could be monitored. Such an analysis can only be performed in a proper way if all information available on him is considered in close connection with one another (personal file) and his role in the network, just as the roles other persons in the network had, is charted periodically (network analysis).

By analysing his activities and development periodically, it would have been possible to review whether more attention for him was necessary and whether reprioritisation in the investigation into the Hofstad group was, consequently, required.

Limited capacity should not and need not stand in the way of keeping a dossier on persons in respect of whom this is necessary. For this is not about collecting extra information, but only about bringing information together in an organised and orderly way, information which is collected anyway. When the arrangement of information is in order, this will only add to the efficiency and effectiveness of the intelligence work.

The Committee observes that if the AIVD had created a personal file on Mohammed B., as the Committee has done by charting all the information available to the AIVD before 2 November 2004, there still would have been no picture of a person in respect of whom there was a serious suspicion that he had any direct involvement in the preparation of any attacks. However, the data available do show an increased importance to pay attention to Mohammed B.

The Committee is also of the opinion that the AIVD could have made use of the manpower and operational resources that the RID Amsterdam-Amstelland had to offer in this period. The deployment of the RID would in particular have had an added value because the AIVD, due to its limited capacity, was able to closely monitor only a limited number of people. The AIVD could have called in the RID Amsterdam-Amstelland to monitor several persons

from the Hofstad group, including Mohammed B. For example, the AIVD could have asked the RID Amsterdam-Amstelland to periodically trace Mohammed B. in the police registers or to periodically inquire about Mohammed B. with the contacts of the RID. By calling in the RID Amsterdam-Amstelland, the mutation in the police register of 3 May 2004 that Mohammed B. had threatened a staff member of the Social Services, could have reached the AIVD. Furthermore, the Committee finds it incomprehensible that the AIVD has dismissed the offer by the RID Amsterdam-Amstelland to conduct an investigation into the documents that Mohammed B. was carrying when he was arrested, considering the AIVD itself had insufficient capacity to study these documents in depth.

Furthermore, based on the information the AIVD possessed on Mohammed B. before 2 November 2004, he would have been a suitable candidate to be included in the Analytical Cell/CT-Infobox. The Committee does observe in that respect that this instrument was still being developed before 2 November 2004 and placing Mohammed B. in the Analytical Cell/CT-Infobox would therefore in practice have made little difference.

8.2 Other findings

Findings relating to threats

The Committee has not come across any information based on which it could be concluded that the AIVD had any specific knowledge (such as target, location or date) of an imminent attack on Theo van Gogh (or otherwise) by Mohammed B. or by (another member of) the Hofstad group.

The Committee has established that since October 2004 the AIVD had indications that the Hofstad group “was cooking up something”. The signs prompted the AIVD in late October 2004 to somewhat intensify the investigation into the Hofstad group. Before 2 November 2004, the AIVD did not get round to the actual effectuation of the deployment of (new) special powers.

The Committee has established that the signs received by the AIVD did not result in the AIVD informing the Regional Intelligence Services of the police forces concerned, which would have allowed them to be extra alert to any developments in their region. The Committee considers this a missed opportunity to make use of the ‘eyes and ears’ of the RIDs in the regions. Without this having cost the AIVD any extra capacity, the AIVD could have requested, for example, the RID Amsterdam-Amstelland to be extra alert to any noteworthy matters in Amsterdam, where several people from the Hofstad group, including Mohammed B., lived and the group frequently met.

In the Committee’s opinion, the AIVD could reasonably have decided, in the autumn of

2004, to wait with issuing an official report to the National Public Prosecutor for Counter-terrorism until the service had more concrete indications of an imminent attack, in order to protect the AIVD's access to information and because the measures taken (or that can be taken) in response to issuing such an official report, may have far-reaching consequences for the people involved.

Before 2 November 2004, the AIVD possessed information that members of the Hofstad group believed that certain publicly known figures deserved death. The Committee has not come across any information with the AIVD showing that Theo van Gogh was one of them.

In 2004, the AIVD was aware of threats against Theo van Gogh, but before 2 November 2004 did not have any information showing a connection between the threats against Theo van Gogh and persons from the Hofstad group, including Mohammed B.

Findings relating to factors that have influenced the AIVD's investigation into the Hofstad group

In chapter 7 the Committee found several bottlenecks in the AIVD's investigation into the Hofstad group and Mohammed B., respectively.

The Committee has established that the organisation of the information management was not in order, that there was only a limited capacity of staff and that there was an imbalance between experienced and inexperienced staff, that the cooperation between the AIVD and the RID Amsterdam-Amstelland was not optimal and that internet research did not yet have a clear place within the AIVD.

The Committee observes that these bottlenecks are to be viewed against the background of the period in which the investigation into the Hofstad group took place. As explained in chapter 3, after the attacks in the United States in September 2001, the AIVD was faced with increased threats. These (terrorist) threats were increasingly aimed at the Western world and appeared to more and more come 'from inside'. In addition to the increased threat emanating from Islamist terrorism, the work load for the AIVD also increased as a result of increased internationalisation of the intelligence work, an enhanced external focus of the AIVD since the beginning of the century, an increased provision of information to "partners in the chain" such as the Public Prosecution Service and the Immigration and Naturalisation Service, and the expansion of tasks to be performed by the AIVD. The substantial increase of staff as a result of the report of the Administrative Evaluation Committee AIVD (Havermans Committee) from November 2004, was, however, still to be effectuated.

Meanwhile, more than three years have passed in which, in particular as a result of the report of the Havermans Committee, the AIVD's personnel has increased and several

projects have started to develop the AIVD further. As for the provision of information, cooperation with the Regional Intelligence Services and internet searches, positive results have been achieved to date.

The Committee, therefore, refrains from providing any recommendations relating to an investigation by the AIVD that was conducted 2003 and 2004, because most of these recommendations would by now be superseded.

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**Review Committee on the
Intelligence and Security Services**

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