

## **SUPERVISORY COMMITTEE**

ON THE

THE INTELLIGENCE AND SECURITY SERVICES

CTIVD no. 6

## **SUPERVISORY REPORT**

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### **On the Supervisory Committee's investigation into the AIVD's investigation into radical animal rights activism and left-wing extremism**

#### **1. The AIVD's task in the area of radical animal rights activism and left-wing extremism**

Under its so-called A-task<sup>1</sup> the AIVD conducts investigations into left-wing extremism and radical animal rights activism.

Radical animal rights activism is referred to as a separate area of investigation in this context, because this subject cannot be considered as fully belonging to the domain of left-wing extremism. In its memorandum issued in July 2004, entitled 'Animal rights activism in the Netherlands: the line between peaceful and burning protest', the AIVD stated that radical animal rights activists can be left-wing activists as well as extreme right-wing or apolitical. Besides, there is also a group of radical animal rights activists originating from the circle of the 'straight edge'.<sup>2</sup>

The AIVD does not investigate every form of animal rights activism; only the more radical forms of this activism are part of the AIVD's investigative tasks (art. 6, paragraph 2 sub a of the Intelligence and Security Services Act 2002<sup>3</sup>). Forms of action that pose no threat to the democratic legal order, are not investigated.

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<sup>1</sup> Art. 6, paragraph 2, sub a of the WIV 2002.

<sup>2</sup> A subculture among youngsters in particular, aimed at abstinence of goods like alcohol and meat. In this context this movement is engaged in, among other things, animal rights, but also for example things like anti-abortion. See for example the AIVD memorandum 'Animal rights activism in the Netherlands. The line between peaceful and burning protest', p. 7-8. Can be referred to via [www.aivd.nl](http://www.aivd.nl).

<sup>3</sup> Hereinafter to be referred to as: the WIV 2002.

'If the radical ideas imply that undemocratic objects are pursued or if these ideas lead to activities that pose a threat to the democratic legal order, government interference is required and the persons or organisations involved will be brought to the AIVD's attention.'<sup>4</sup>

Radical animal rights activists attempt to influence political decision-making in areas such as bio industry and animal testing, among other things by using violence, or threatening to use violence. Because of these illegal actions, they pose a threat to the democratic legal order.

In the AIVD's investigation into left-wing extremism the AIVD focuses with a varying focus on extremist expressions relating to, for example, antiglobalisation, antifascism, anti-asylum policy and antimilitarism.

## **2. The Committee's investigation**

The Supervisory Committee on the Intelligence and Security Services (hereinafter referred to as: the Committee) has conducted an investigation into the activities developed by the AIVD from 29 May 2002 (the effective date of the WIV 2002) within the context of the investigation into radical animal rights activism and left-wing extremism. This investigation was announced by letter of 11 November 2004, in accordance with art. 78, paragraph 3 of the WIV 2002, to the Minister of the Interior and Kingdom Relations and the speaker of the Lower House of the States General. The Committee has mapped out the powers used and assessed these against the statutory requirements including the mandate regulations and the AIVD's general instructions. Also assessed in this context was whether or not the investigative activities performed met the requirements of necessity (article 18 of the WIV 2002), proportionality and subsidiarity (article 31 and 32 of the WIV 2002). In addition to examining the files the Committee also conducted talks with several staff members of the service responsible for the investigation.

## **3. The AIVD's interpretation of its tasks**

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<sup>4</sup> See the AIVD memorandum referred to in note 2, p. 19.

As mentioned above, with a view to its tasks the AIVD can only conduct investigations into forms of activism that pose a threat to the democratic legal order. This can imply that the form of activism concerned bears a violent component, but it can also mean that the ideas of the activists are undemocratic without resulting in violent manifestations.

For a long time the AIVD referred to 'violent political activism' in respect of the present area of investigation.<sup>5</sup> However, this term was perceived as inadequate to cover the overtones of the phenomena investigated. There are for example a number of people active within the area of investigation who are hardly if at all politically motivated. Also, the phrase violent does not apply to the area of investigation at large. Also non-violent activism according to the AIVD is to be investigated because this may be a precursor of violent activism. Therefore the AIVD also conducts investigations into the possible radicalisation of persons within the areas under investigation. For radicalisation, according to the AIVD, points to an increased willingness to use extralegal means. The AIVD considers it necessary to continue its investigations into these developments as well.

This investigation into radicalisation will at all times have to fall within the boundaries of the AIVD's tasks pursuant to art. 6, paragraph 2 sub a of the WIV 2002. This means that there needs to be a serious suspicion that the persons and/or organisations, due to the objects they pursue, pose a threat to the continued existence of the democratic legal order. This points to a direct link to the undemocratic ideas of these activists and the objects they pursue, which are at odds with the principles of a democratic legal order.

Investigations into non-violent activism are also necessary, according to the AIVD, on account of an important (international) state interest that may be harmed by political actions (for example activities of anti-globalists during an EU summit).

The AIVD has opted for replacing the phrase 'violent political activism' by the phrase 'left-wing (and right-wing) extremism'.

The nature of the activism does influence the specific substance of the AIVD investigation. If violent activism is involved, the AIVD conducts a more in-depth investigation, since the threat regarding the democratic legal order is probably also greater. The investigation into non-violent activism (e.g. in the context of radicalisation) is basically more limited in scope.

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<sup>5</sup> See for example the annual report AIVD 2004, p. 43 ff.

The above is also important for the use of special powers. Pursuant to art. 18 of the WIV 2002 these powers may only be exercised in so far as this is necessary for a proper execution of its tasks by the AIVD. The use of special powers may lose the required necessity if the threat relating to the democratic legal order is too small.

In practice, however, it is often difficult if not impossible to make a clear distinction between the various forms of activism. Most of the AIVD's objects of investigation (the so-called targets) in this area engage in several forms of activism, and are therefore referred to by the AIVD as 'multi-issue activists'.

The Committee is of the opinion that in conducting its investigations in the area of radical animal rights and left-wing extremism, the AIVD has remained within its task description.

#### **4. Summary**

In the present investigation the AIVD worked together with several services. Below, the Committee will enter into several of these partnership modalities.

##### **4.1 The role of the RIDs**

In the investigation into left-wing extremism and radical animal rights activism the AIVD is assisted by the Regional Intelligence Services (RIDs) that resort under the 25 regional police forces. Because of their embedding and distribution across the Netherlands the RIDs are considered especially important for monitoring developments within society.

The basis for the RIDs' activities which they conduct for the AIVD is art. 60 of the WIV 2002, which provides that the superintendent of a police force performs activities for the AIVD. In addition to this task the RID also has a task in the area of the public order. There is no relationship of authority between the AIVD and the RID in this latter task. The responsibility as to how this is given substance, lies with the mayor and the superintendent of the relevant police force.

When the RIDs perform activities under art. 60 of the WIV 2002, these are to fall under the AIVD's team instructions. If special powers are used in this context, this is to take place in accordance with the AIVD's mandate regulation. In this sense the RID officers are called in as if they were AIVD staff. The RIDs are therefore not entitled to independently use special powers when performing activities on behalf of the AIVD.

The Committee has established that the RIDs' role is not always very clear. Especially regarding a subject as the present one there is bound to be an overlap of the RIDs' two tasks. It is therefore not very clear how this distinction works in practice and how the AIVD can supervise it.

The Committee decided not to treat this subject exhaustively within the context of this investigation. The things found to be unclear relating to the use of the RIDs in the investigations of the AIVD are cause for the Committee to initiate an in-depth investigation into this issue shortly.

#### **4.2 Cooperation and alignment of tasks with the UCTA**

Besides the AIVD the Counter-terrorism and Activism Unit (UCTA)<sup>6</sup>, a detective unit of the National Police Agency, also has a task in the area of animal rights activism.<sup>7</sup> The investigation conducted by the UCTA has a different angle from the investigation conducted by the AIVD; at all times it is to be aimed at the investigation of criminal offences. However, the two investigations can show an overlap. For, often, the same persons are investigated both by the AIVD and the UCTA.

Recently two staff members of the National Police Agency were appointed to perform activities on behalf of the AIVD in accordance with art. 60 of the WIV 2002 (the so-called ID-National Police Agency). For the AIVD these officers are the eyes and ears within the police force. Through them they can take cognisance of the activities of the UCTA in the area of animal rights activism.

The AIVD also deploys a staff member of its own within a unit of the National Criminal Intelligence Department (DNRI), acting as a liaison. The liaison protects the interests of the

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<sup>6</sup> Formerly the Unit Counter-terrorism and Special Tasks (UTBT).

<sup>7</sup> The National Police Agency has issued almost simultaneously with the AIVD memorandum 'Animal rights activism in the Netherlands' a crime picture analysis on animal rights activism. This analysis can be referred to via [www.justitie.nl](http://www.justitie.nl).

AIVD in the areas where there is an overlap of tasks between the two services. The liaison is to closely consult with the two officers of the National Police Agency appointed as ‘art. 60 officers’.

The persons referred to are to warn their superiors when one service enters, or threatens to enter, the territory of the other service. The Committee has established that in the past the alignment of tasks and activities between the AIVD and the UCTA was in need of improvement. Therefore it subscribes to the appointment of said officers for streamlining the tasks.

## **5. Use of (special) powers**

In the investigation into radical animal rights activism and left-wing extremism the AIVD used different powers. According to the Committee the use of these powers met the statutory requirements, including the requirements of necessity (art. 18 of the WIV 2002), subsidiarity and proportionality (art. 31 and 32 of the WIV 2002).

The Committee would like to make a few observations on the use of certain special powers.

### **5.1 Motivating the renewal of taps (art. 25 of the WIV 2002)**

The Committee is of the opinion that as art. 25 of the WIV 2002 (tapping of telecommunication) is invoked over a longer period, the motivation regarding the renewal of this power becomes more important. In the Committee’s opinion the AIVD is to indicate in the clearest possible way which information has resulted in the use of the power in the previous period(s) and the reason(s) why renewal of the tap is necessary for a proper performance of its tasks (art. 18 of the WIV 2002). The latter is all the more important if using the power in the past period hardly if at all resulted in relevant intelligence. In addition, the AIVD is to render account that it has sufficiently met the requirements of subsidiarity and proportionality.

The Committee has established that the motivation for renewals was initially scant at times. In the course of the Committee’s investigation the team extended the motivation for renewal of the use of art. 25 of the WIV 2002. The Committee is of the opinion that at the moment the team meets the above motivation requirements.

The Committee recommends that in motivating the renewals of the use of art. 25 of the WIV 2002 the AIVD describe in detail why further use is necessary.

The Committee is of the opinion that the AIVD meets its obligations under art. 32 of the WIV 2002, which provides that exercising a special power is to be stopped if the objective of exercising the power has been reached. The Committee has established that the use of art. 25 of the WIV 2002 is immediately terminated by the AIVD when this is the proper course of action based on all the relevant circumstances.

## **5.2 Telecommunication with persons who have a right of nondisclosure**

In applying art. 25 of the WIV 2002, for example for tapping telephone conversations, it sometimes occurs that a conversation between a target of the AIVD and a person who has a right of nondisclosure, for example his lawyer, is tapped and recorded. The Committee has investigated how the AIVD deals with this and what starting points the AIVD uses with respect to the recording, processing and laying down of telecommunication in case of a person who has a right of nondisclosure.

The AIVD takes the position that the rules for handling telecommunication with a person who has a right of nondisclosure, which pursuant to art. 126aa of the Code of Criminal Procedure and the Decree on the storage and destruction of non-consolidated documents<sup>8</sup> are applicable to the prosecution trajectory (tracking down and prosecuting) are not fully applicable to the AIVD. The rationale of these rules is in the AIVD's opinion that someone should be able to communicate freely with a person who has a right of nondisclosure without this communication being used against him or her later in legal proceedings.

It is not the AIVD's task to collect information that is used later in legal proceedings. The AIVD's key task is to timely warn the bodies having the power to take measures against possible threats to the interests referred to in the AIVD's task description (see art. 6 of the WIV 2002). For this reason the AIVD considers itself in principle not bound to the rules prevailing in the investigation with regard to the conversations with a suspect with a person who has a right of nondisclosure.

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<sup>8</sup> Decree of 15 December 1999, Bulletin of Acts and Decrees. 1999, 548.

Nevertheless the AIVD attaches great importance to the principle that someone should be allowed to freely communicate with a person who has a right of nondisclosure. For this reason the AIVD has formulated the following starting points about the way in which the communication recorded with a person who has a right of nondisclosure is to be handled.

Information originating from telecommunication with a person who has a right of nondisclosure will as a rule not be included in an official message to the Public Prosecutions Department.

For otherwise the rules for prosecution purposes could be violated indirectly. However according to the AIVD there are circumstances conceivable in which the importance of the protection of our society is to be considered more serious than the importance of communicating freely with a person who has a right of nondisclosure. In such a case information originating from the recorded telecommunication with a person who has a right of nondisclosure, will indeed be included in an official message to the Public Prosecutions Department. For example, information regarding an imminent attack. In this case the official message will not contain more information than strictly necessary.

The AIVD is aware of the fact that the service should be focused even more on the requirement that recorded telecommunication with a person who has a right of nondisclosure may not be laid down in an official message after the possible entering into force of the legislative proposal on Shielded witnesses.<sup>9</sup> This legislative proposal is aimed at the possibility of using AIVD information more readily. All official messages to the Public Prosecutions Department are assessed by the AIVD's legal department, in the context of which this department obtains insight into all underlying documents. Attention is also paid to the above point. Subsequently the representative of the Public Prosecutions Department (the National Public Prosecutor for Counter-terrorism) is also given the opportunity to examine the underlying documents to the official message.

The Committee subscribes to the AIVD's position that the rules concerning the handling of recorded telecommunication with a person who has a right of nondisclosure, which apply in criminal proceedings, are not fully applicable to the AIVD. The rationale of these rules is in

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<sup>9</sup> Parliamentary document number 29 743.

particular that the contents of such telecommunication is not allowed to be used against an individual in legal proceedings. As the Supreme Court of the Netherlands put it, the right of nondisclosure is based on the circumstance that ‘the social interest that the truth is revealed in court, is to make way for the social interest that everyone should be able to refer freely and without fear for publication for assistance and advice to a person who has a right of nondisclosure.’<sup>10</sup>

This consideration of the Supreme Court suggests a link to legal proceedings.

Nevertheless the Committee, too, considers the subject to be of great importance for the AIVD. For one of the principles of the right of nondisclosure is that an individual is to rely on free contact between him and a person who has a right of nondisclosure (for example his lawyer) being guaranteed. This is an important principle of a democratic legal order and one of the requirements ensuing from the European Convention for the Protection of Human Rights (ECHR). This principle is not served by the fear that the AIVD is listening in and records the data.

Therefore the Committee considers it necessary that the AIVD adopts a restrictive attitude in working out and recording telecommunication with a person who has a right of nondisclosure. The Committee has established that the AIVD is aware of this special nature of the power and for this reason has set the requirement that such communication may only be recorded if this is strictly necessary for a proper performance of its tasks.

The Committee will – in view of the special nature of the power – assess critically whether or not the AIVD meets the requirements set to this. In the future the Committee will give special attention to this subject in its investigations.

The AIVD has informed the Committee that it will lay down the above subject more adequately in guidelines so that everyone within the service is cognisant with the prevailing rules on this subject and with the special nature of this power.

The Committee, too, considers this necessary.

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<sup>10</sup> See a.o. HR 29 June 2004, JOL 2004, 380.

Even if the investigation of the AIVD is not aimed at the tracking of criminal offences, the investigation may still – as accompaniment – lay bare information about such facts. In such cases it is necessary to consider the requirements applicable within the context of the prosecution trajectory. For this reason the Committee agrees with the AIVD that the contents of the recorded communication with a person who has a right of nondisclosure, as a rule may not be included in an official message to the Public Prosecutions Department, and that, when this happens, substantial restraint should be observed.

In appropriate cases the Committee will assess whether the requirements referred to have been met.

### **5.3 Committing criminal offences by agents of the AIVD**

Under certain circumstances agents of the AIVD are permitted to commit criminal offences, or to render their cooperation to such offences. For this an instruction by the AIVD is always required, which pursuant to art. 21, paragraph 3 of the WIV 2002 will only be given if a proper performance of the tasks of the service or the security of the person involved compels doing this. Committing criminal offences within the context of a proper performance of tasks will often be related to the necessity to maintain crucial access to information. Regarding the required ‘safety of the agent’ one could imagine the situation that aberrant behaviour could result in the person involved being unmasked and threatened by – sometimes life-threatening – retaliatory measures.<sup>11</sup> The instruction referred to must be laid down in writing (art. 21, paragraph 6 of the WIV 2002).

In case such an instruction has been drawn up and approved by the competent officers, this constitutes a ground for exemption from criminal liability in the sense of a competently granted official order (art. 43 of the Criminal Code).<sup>12</sup> Only then can there be impunity for the agent, should it come to criminal proceedings.

‘As explained in the explanatory memorandum the presence of an instruction is not only important in connection with the control aspect referred to above, but also to bring about that an agent – provided he has kept to the instruction – has impunity in

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<sup>11</sup> Parliamentary documents II 1997/98, 25 877, no. 3, p. 33.

<sup>12</sup> Parliamentary documents II 1997/98, 25 877, no. 3, p. 33.

these cases. The latter – certainly for the person of the agent – is essential and for this reason alone creates an obligation.’<sup>13</sup>

The Committee points to the responsibility of the service in appropriate cases – within its powers – to avoid that agents are convicted as a result of the activities they perform on behalf of the AIVD. This means among other things that in appropriate cases (when the agent involved will possibly need to expose himself to (co-)perpetrating criminal offences, an instruction setting out the conditions under which the agent is permitted to commit criminal offences, will need to be given to the agent.

In the Committee’s opinion the AIVD needs to have an extra focus on drawing up instructions regarding to the (co-)perpetrating of criminal offences because of the broad interpretation of participation in an offence as used by the courts. Belonging to a group that commits criminal offences, without the relevant participant himself actually committing these criminal offences, under certain circumstances suffices for a conviction of co-perpetrating a criminal offence. Relevant circumstances are for example the possibility to distance oneself from the criminal offences to be committed<sup>14</sup>, the knowledge that the offence will be committed<sup>15</sup> and the intensity of the cooperation.

Broad penalisation of co-perpetrating a criminal offence makes it easier for AIVD agents to end up in the sphere of criminal actions, all the more so because of the penalisation of preparatory actions. Furthermore the articles 140 and 141 of the Criminal Code are important in this context. These articles penalise the participation in a criminal organisation and acts of violence in a public place.<sup>16</sup> The latter penalisation is used in particular for riots and vandalism; activities that frequently take place in the areas of investigation that are relevant in this context.

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<sup>13</sup> Parliamentary documents II 1999/00, 25 877, no. 8, p. 60.

<sup>14</sup> See Supreme Court 12 November 1996, NJ (Dutch Case Law) 1997, 190, Supreme Court 20 January 1998, NJ (Dutch Case Law) 1998, 426 and Supreme Court 26 October 2004, NJ (Dutch Case Law) 2004, 682.

<sup>15</sup> Supreme Court 20 January 1998, NJ (Dutch Case Law) 1998, 426.

<sup>16</sup> Committing violence against persons or goods in public places and with one or more persons.

With a view to the above, formulating an instruction to certain agents of the service is very important. In the Committee's opinion, the AIVD is to monitor the (timely) instruction of the service's relevant agents.<sup>17</sup>

In the Committee's opinion drawing up an instruction with regard to perpetrating criminal offences is also in the interest of a proper performance of its tasks by the service, since agents will more readily commit criminal offences in the context of their activities for the service when they know that this has basically no negative criminal consequences for them. It has turned out that the inability to fully guarantee impunity negatively affects the willingness of agents to commit criminal offences on the instruction of the AIVD.

In the Committee's opinion the AIVD has the obligation to discuss any consequences as regards criminal prosecution for the agent. The Committee has established that the AIVD informs its agents in great detail about these possible consequences.

The parliamentary documents explain that the instruction is to be approved by the Public Prosecutions Department (in this case represented by the National Public Prosecutor for Counter-terrorism).<sup>18</sup> When measures for prosecution purposes have been taken or are threatened to be taken, the National Public Prosecutor can attempt to avoid any possible prosecutorial consequences for the agent. It has turned out that the National Public Prosecutor is not always able to do so. For neither the AIVD nor the National Public Prosecutor has the power to oblige the Public Prosecutions Department to abstain from taking certain prosecutorial measures. However, this can be a problem for the (agent of the) AIVD, as a result of which the AIVD is forced to look for ad hoc solutions.

In addition, informing the Public Prosecutions Department about the AIVD agents in which the Public Prosecutions Department is interested, results in a larger circle of persons having knowledge of sensitive operations of the AIVD, which is at odds with the interests of the service and the safety of the agents.

The Committee was pleased to take cognisance of the fact that at the moment much is being done to effect the governmental decree provided for in art. 21, paragraph 7 of the WIV 2002. In this governmental decree, further rules are set in respect of:

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<sup>17</sup> In principle only those agents whose reliability is not open to question.

<sup>18</sup> See in this sense for example Parliamentary documents II 2000/01, 25 877, no. 59, p. 9.

- a. the conditions under which and the cases in which, in order for an agent to carry out an instruction, acts may be performed that may result in cooperation being rendered to committing the offence, or in actually committing an offence;
- b. the way in which the relevant power being exercised is controlled.

## **5.4 Open sources**

One of the starting points of the principle of subsidiarity is that no (special) powers are to be used if consulting open sources suffices. The legislator has formulated this starting point in art. 31, paragraph 1 of the WIV 2002:

‘Exercising a power as referred to in this paragraph is only permitted if the intended collection of information cannot be done (in time) by consulting sources of information accessible by anyone, or sources of information for which the service has been granted a right to peruse the data these contain.’

The Committee has established that in the AIVD’s performance of its tasks the internet as an open source is becoming increasingly important in the intelligence process. By using this medium relevant data can be retrieved, as a result of which in some cases (special) powers do not need to be used. Consequently, the intrusion of the privacy of those involved can be kept to a minimum.

The Committee has established that in the current investigation by the AIVD open sources play an important role. In the Committee’s opinion the AIVD thus meets the requirement laid down in art. 31, paragraph 1 of the WIV 2002.

## **6. Processing of data**

### **6.1 Processing of data regarding candidates for being approached**

In the investigation into left-wing extremism and radical animal rights activism the AIVD works with a number of informants (art. 17 of the WIV 2002) and agents (art. 21 of the WIV 2002) that provide the AIVD with information.

Contacting these people for the first time sometimes involves a risk for the AIVD. For example, the persons contacted (may) have contact with the persons the AIVD is interested in. For all of the AIVD's potential sources the AIVD needs to consider whether or not they can be approached by the AIVD. It is difficult to determine this in advance. Therefore the AIVD conducts investigations into these people. In these investigations sometimes informants are contacted with the request to provide information about these people to the AIVD. These informants are people who know the candidate for being approached and for this reason can provide information (voluntarily) to the AIVD. This request for information falls under art. 17, paragraph 1 heading and sub a of the WIV 2002, which states that to support a proper performance of its tasks the AIVD is entitled to refer to anyone considered able to provide the required data.

The AIVD is not permitted to use special powers in these investigations, since according to art. 18 of the WIV 2002 this is only allowed in so far as this is necessary for a proper performance of the tasks referred to in art. 6, paragraph 2 sub a and d of the WIV 2002. The investigation referred to here does not fall under this article.

Contacting informants, however, is not a special power. However, asking informants for information does result in the processing of personal details in the meaning of art. 13 of the WIV 2002 and in this sense does lead to an intrusion on privacy. This article provides several grounds on which the AIVD can base the processing of personal details. In processing personal details in respect of candidates for being approached art. 13 paragraph, 1 heading and sub e of the WIV 2002 is relevant:

‘The processing of personal details by the AIVD can only involve persons whose data are necessary to support a service's in properly performing its tasks.’

The investigation referred to here and, in connection with this, the processing of personal details is necessary to enable the service to take an adequate decision about whether or not to approach the people in question. This concerns in particular reducing any existing risks and to assess whether or not it concerns a sufficiently reliable person. The latter can even be considered a duty for the AIVD.

In this processing the AIVD will need to meet the, in the context of intrusion on the privacy general, principle of proportionality which requires that the intrusion is to be proportional to

the purpose to be served. To this end all the circumstances of the case are to be considered. In the Committee's opinion an important viewpoint in this context is the position of the person involved. If this person has, for example, a close relationship with one of the objects of the AIVD's investigation, in principle a more elaborate investigation is allowed. For with this person the service runs a greater risk of not wishing to comply with the service's request for information and, for example, the candidate informing the targets of the AIVD. This would interfere with a proper performance of its tasks by the service.

In respect of persons who have no direct contact with the targets of the AIVD, but who are considered by the AIVD as candidates for being approached, under circumstances it may be permitted to conduct a more in-depth investigation into these people. A case in hand is the intention of the AIVD to deploy the candidate for being approached in a sensitive investigation, for example an investigation in which the agent will run a great personal risk. In such a case the AIVD needs to have more certainty as to whether this person is suitable for the tasks the AIVD wishes to assign to him.

In these circumstances the Committee considers it necessary that the AIVD motivates the reason for conducting such an investigation. The AIVD is to make sure that the processing of personal details will only take place in respect of persons whose data are necessary to support the proper performance of its tasks (art. 13, paragraph 1 heading and sub e of the WIV 2002).

## **6.2 Arrears in documentation**

Recording information is part of the processing of data to which among other things art. 12 of the WIV 2002 applies. Art. 12, paragraph 3 of the WIV 2002 provides that the processing of data is to be performed with due care and in accordance with the law.

In the Committee's opinion this statutory obligation includes the timely recording of the information in the appropriate automated systems. This is also important for the ability to retrieve the information and thus for a proper performance of its tasks by the service.

The Committee has established that early 2004 the team had great arrears in processing all the relevant information. This information was still to be entered into the appropriate system. At the time the team had insufficient capacity to do so. This problem has meanwhile largely been solved thanks to an extension of capacity.

The Committee recommends that the AIVD closely monitor the capacity regarding documentary information management in order to meet its statutory obligations in the area of the processing of data.

## **7. Conclusions and recommendations**

- 7.1 The Committee is of the opinion that the AIVD in performing its tasks in the investigation in the area of radical animal rights activism and left-wing extremism, has remained within the scope of its tasks.
- 7.2 The Committee has signalled a number of things that are unclear in respect of the deployment of RIDs and investigations conducted by the AIVD. The Committee will shortly suggest an in-depth investigation into the role of the RIDs.
- 7.3 The Committee has established that at both the AIVD and the National Police Agency staff have been appointed who are to ensure a proper cooperation and alignment of tasks between the AIVD and the National Police Agency. The Committee subscribes to this appointment.
- 7.4 The use of (special) powers met the statutory requirements including the requirements of necessity (art. 18 of the WIV 2002), subsidiarity and proportionality (art. 31 and 32 of the WIV 2002).
- 7.5 The Committee recommends that the AIVD describe in the clearest possible way which information a tap has produced in the previous period(s) and why renewal of the use of art. 25 of the WIV 2002 is necessary for a proper performance of its tasks.
- 7.6 The Committee has established that the exercise of powers was terminated once the purpose for which the powers were used, had been attained. As a result the AIVD met the requirement of art. 32 of the WIV 2002.
- 7.7 The Committee subscribes to the AIVD's position that the rules for recorded telecommunication with persons who have a right of nondisclosure applicable in the prosecution trajectory, are not fully applicable to the AIVD.

Nevertheless because of its nature the Committee considers the subject also important for the AIVD. The Committee has established that the AIVD deals with this restrictively. Telecommunication with a person who has a right of nondisclosure is only worked out and recorded if this is strictly necessary for a proper performance of its tasks.

Like the AIVD, the Committee considers it necessary to lay down the above criteria in more effective guidelines so that the entire service can be considered familiar with these. The Committee is of the opinion that it should basically be avoided that the contents of recorded telecommunication with a person who has the right of nondisclosure is included in an official message to the Public Prosecutions Department. If this happens anyway, great restraint should be observed. The Committee has established that the AIVD shares this viewpoint.

- 7.8 The Committee points to the AIVD's responsibility in the appropriate cases to avoid – and in so far as this lies within its powers – that agents are convicted as a result of the activities they perform for the AIVD. This brings with it that in cases in which this is appropriate, an instruction regarding the (co-)perpetration of criminal offences is to be issued.
- 7.9 The Committee has established that in the current investigation of the AIVD open sources played an important role. In the Committee's opinion this way the AIVD meets the requirement of art. 31, paragraph 1 of the WIV 2002.
- 7.10 In the Committee's opinion the AIVD – with a view to the requirement of proportionality – is to motivate clearly why an extensive investigation into a candidate for being approached is necessary.
- 7.11 The Committee recommends that the AIVD keenly monitor its capacity in the area of documentary information management in order to meet its obligations in the area of processing of information.

Thus adopted at the meeting of the Committee of 8 February 2006.