

Proposal for Dutch Intelligence & Security Act of 20xx; Memory of Understanding  
(consultation version June 2015)

Appendix 3: Overview of special powers and safeguards

Special power <sup>203204</sup>	Required level of approval	Period	Review	Retention / destruction period gegevens	Separation of tasks/ duty/ compartmentization
Observation and following (Article 25)	Minister or head of service; delegation is possible. Minister indien inzet technische hulpmiddelen in woningen betreft.	Max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Agents (Article 26)	Minister or head of service; delegation possible	Max. 1 year; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Searching closed places; searching closed objects; carrying out examination of an object for the purpose of establishing identity (Article 27)	Minister or head of service; delegation is possible. Minister in case of search of homes.	Max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
DNA research for the purpose of establishing (including verification) of identity (Artikel 28)	Minister. Also in case of further processing of DNA research results.	Max. 3 months; extension for same period possible. Due to its nature, however, only valid for a specific investigation.	Purpose; necessity; proportionality; subsidiarity.	Cell material that has been used for DNA research must be destroyed three months after. DNA profiles may be retained for max. 5 years; extension possible w/approval from Minister.	Access to the data is regulated by gov't decree.
Opening letters and other addressed mail (Article 29)	Court of The Hague	For a letter or other addressed sending in possession of the service; per letter or addressed sending. In other cases: max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Exploring and penetrating automated works; compelled decryption (Article 30)	Minister; also in case of compelled decryption.	Max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Data taken over from automated works must be examined for relevance within twelve months and then destroyed.	Not applicable.
Interception of specific persons, organizations and numbers (Article 32)	Minister. Approval not required for military traffic with a foreign source or destination.	Max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Collected data must be examined for relevance within 12 months and be destroyed after that. In case of military traffic, non-military traffic must be destroyed immediately.	Not applicable.
All other interception (Article 33; non-specific/bulk)	Minister.	Max. 12 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Collected data can be retained for max. 3 years for the purpose of a processing as meant in Article 34 and 35;	Yes. Minister appoints servants who may take knowledge of the data for the purpose of

<sup>203</sup> Insofar the power is exercised against a journalist for the purpose of identifying the source of the journalist, then approval from the court of The Hague is required.

<sup>204</sup> Insofar the power is used in support of proper performance of the services' tasks (Article 23, second paragraph), then approval from the Minister is required; period of approval is set to max. 1 month with possibility of extension; CTIVD is informed about extension of approval (Article 24, fifth paragraph).

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				irrelevant data and data not examined for relevance are destroyed after that.	the required activities. Mandate to head of service possible.
Research using data collected on the basis of Article 33: search aimed at interception and search aimed at selection (Article 34)	Minister.	Max. 12 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	See Article 33.	Yes. Minister appoints servants who may take knowledge of the data for the purpose of the activities required in this context. Mandate to head of service is possible.
Selection of data; metadata analysis (Article 35)	Minister for selection of data; Minister for metadata analysis aimed at identifying persons or organizations.	Max. 3 months with possibility for extension (selection); max. 12 months with possibility for extension (metadata analysis).	Purpose; necessity; proportionality; subsidiarity.	See Article 33.	Yes. Minister appoints servants who may take knowledge of the data for the purpose of the activities required in this context. Mandate to head of service is possible.
Mandatory provisioning of information by comms. providers for exercise of Article 33 (Article 36) <sup>205</sup>	Approval not required. Request to provider sent by head of service.	Not applicable.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Mandatory cooperation from communication providers for exercise of the power meant in Article 33, second paragraph tweede lid (Article 37) <sup>206</sup>	Minister.	Max. 12 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Mandatory handover of telecommunications (content) data of a user of a communication service (Article 38)	Minister.	Max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Collected data must be examined for relevance within twelve months and destroyed after that.	Not applicable.
Mandatory handover of traffic data by a provider of a communications service (Article 39)	Minister or head of service.	Max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Mandatory handover of subscriber data by a provider of a comms. service (Article 40)	Approval not required.	Not applicable.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Mandatory cooperation in decrypting data collected on the basis of Article 32 & 33 (article 41) <sup>207</sup>	Minister.	Max. 3 months; extension for same period possible.	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Not applicable.
Access to places (Article 42) <sup>208</sup>	Approval not required. Warrant needed to access a home without permission of the inhabitant, to be issued by the Minister or on behalf of him/her, the head of a service (General law on accessing buildings).	Warrant for access is valid for three days. (General law on accessing buildings.)	Purpose; necessity; proportionality; subsidiarity.	Not applicable.	Exercise of the power meant in Article 42, first paragraph, is only permitted by persons that have been appointed for that by the head of a service.

<sup>205</sup> Supporting power.

<sup>206</sup> Supporting power.

<sup>207</sup> Supporting power.

<sup>208</sup> Supporting power.