

Letter of 23 December 2011 from the Minister of the Interior and Kingdom Relations to the House of Representatives concerning camera support for mobile supervision operations

Introduction

Under section 6 of the Police Act 1993 and section 47 of the Aliens Act 2000, the Royal Military and Border Police (KMAR) are responsible for supervising compliance with the statutory provisions relating to aliens in the Netherlands. One of KMAR's responsibilities is to carry out mobile supervision operations¹ in areas of the Netherlands close to the internal borders with Belgium and Germany. Mobile supervision operations have two purposes: to combat illegal residence (organised or otherwise) at as early a stage as possible and to help combat cross-border crime, including migration crime.

In this letter, on my own behalf and that of the Minister of Defence, I am pleased to provide you with information on the objectives of – and legal framework for – the camera system that KMAR has developed to support its mobile supervision operations. The camera system is known as @MIGO-BORAS (a Dutch/English acronym standing for 'Mobile Information-Driven Action – Better Operational Results and Advanced Security'). In providing you with this information, I am fulfilling the commitment I made at the parliamentary committee meeting on the Justice and Home Affairs Council and the Stockholm Programme on 8 December 2011.

The system's objectives and structure

The coalition agreement² lays down that the use of mobile supervision operations will be intensified and measures taken to combat illegal residence.³ To make mobile supervision operations more effective and efficient, KMAR has developed @MIGO-BORAS, a camera system intended to provide KMAR with technical support in enforcing the Aliens Act.

The @MIGO-BORAS system consists of cameras (six mobile and fifteen at fixed locations) on the main cross-border roads with Belgium and Germany. The system can identify traffic patterns and, on the basis of general data and target group profiles, it can single out vehicles that seem likely candidates for examination. The system accelerates and objectifies the

¹ Section 50 of the Aliens Act in conjunction with article 4.17a of the Aliens Decree

² 'Tougher measures will be taken to combat cross-border crime committed in the Netherlands by aliens resident in other countries, illegal immigrants and people smugglers, including mobile border controls by the Royal Military and Border Police' (page 24).

selection of vehicles for examination and is therefore a useful addition to existing KMAR practice based on the professional experience of its staff. It helps optimise the implementation of KMAR tasks and make the deployment of its staff more efficient.

Legal framework

In general terms, the crossing of internal borders between EU member states is governed by the Schengen Borders Code.⁴ The abolition of personal checks at internal borders does not affect 'the exercise of police powers by the competent authorities insofar as the exercise of those powers does not have an effect equivalent to border checks'. Article 21 of the Schengen Borders Code permits member states to take the national measures necessary for the maintenance of public order and the legal order in the internal border areas. The mobile supervision operations carried out in the Netherlands amount to such a measure.

The Schengen Borders Code contains no provisions governing camera surveillance in the internal border areas. In draft guidelines on the functioning of the Schengen area, the European Commission recently turned its attention to the use of camera surveillance in internal border areas, and specifically automatic number plate recognition. In the Commission's view, camera surveillance is permissible in these areas as long as it is compatible with the Schengen Borders Code and does not have an effect equivalent to border checks.

In my letter of 8 November 2011,⁵ I wrote that the use of mobile supervision operations in the Netherlands has been made compatible with the Schengen Borders Code. The Aliens Decree 2000 contains safeguards preventing mobile supervision operations from having an effect equivalent to border checks. Mobile supervision operations are carried out on roads in areas up to 20 km from the border with Belgium and Germany. On each road, they may be carried out for up to six hours per day and no more than 90 hours per month. These safeguards also apply to the use of @MIGO-BORAS for the purpose of technical support to mobile supervision operations.

³ House of Representatives 19637, no. 1435, 8 July 2011 (Government approach to illegal residence, p. 5)

⁴ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ EU 2006, L 105/1

⁵ See House of Representatives 19637, no. 1473, 8 November 2011 (Report on the immigration system, January-June 2011, p. 5)

Within the framework of European and national legislation, @MIGO-BORAS may be used in various ways to enforce the statutory provisions relating to aliens in the Netherlands.

1. Collecting and analysing anonymous data for profiling

The use of cameras trained on passing vehicles makes it possible to collect and analyse anonymous data such as the types and numbers of vehicles and the origin of number plates. This data can then be used to generate empirical information for drawing up general profiles on the basis of which future decisions can be taken to stop and examine vehicles. The legal basis for this process lies in the general power to supervise aliens in the Netherlands. The use of automatic number plate recognition for strategic analysis is also supported by the Data Protection Authority's Guidelines on Automatic Number Plate Recognition (2009).⁶ The profiles resulting from the collection and analysis of anonymous data must be compatible with anti-discrimination legislation. When collecting data for analysis, KMAR will not immediately follow up on the information generated, since to do so would be incompatible with the safeguards concerning the intensity and frequency of checks as laid down in article 4.17a of the Aliens Decree 2000.

2. Observing vehicles and selecting those to be stopped and examined

KMAR observes vehicles and selects those to be stopped and examined using general profiles constructed on the basis of the collection and analysis of data. The use of @MIGO-BORAS is compatible with the provisions of article 4.17a of the Aliens Decree 2000.

It is technically possible to use @MIGO-BORAS in conjunction with police information to investigate crime and enforce criminal law. This is not being done for the time being in anticipation of new legislation on the use of automatic number plate recognition. Under the general police powers as laid down in the Police Act,⁷ the system may be used for quick alerts in exceptional or urgent situations.

3. Providing assistance when a quick alert is issued

Under section 2 of the Police Act 1993, a quick alert (or amber alert warning of a terrorist threat) may be issued in the interests of emergency assistance or if there

⁶ Guidelines on Automatic Number Plate Recognition, p. 29

⁷ Sections 2 and 6 of the Police Act 1993

has been a serious or large-scale breach of the legal order or of public order. In such cases, @MIGO-BORAS may be used to follow up on an alert.

Privacy

In support of the enforcement of immigration legislation, @MIGO-BORAS records only general data about vehicles; it does not record data relating to persons. The data is processed and limited in such a way that only legally permissible data reaches the competent authority at the appropriate time. Strict safeguards therefore apply to the storage of the data, access to it by public authorities, and its use for certain purposes.⁸

Everyone is legally entitled to ascertain whether KMAR has processed any of their personal details and, if so, which personal details it has processed.⁹ KMAR will announce its use of camera surveillance by placing signs at the side of the road. Information about the system and privacy issues is also publicly available online.

International issues

On 17 November 2011, the European Commission asked written questions about the system's legal basis, objectives, and implementation. These questions will be answered in early 2012. The House will receive a copy of the letter to the European Commission. On 6 May 2008 and 28 November 2011, the European Commission was provided with general information about the system's development, progress, and implementation. During the latest consultations, it was agreed that, before @MIGO-BORAS is implemented, the European Commission will be informed when the testing stage is to begin.

Neighbouring countries will also be informed about the system's implementation. The Netherlands has been in touch at administrative and/or operational level with Belgium and Germany about the future implementation of @MIGO-BORAS. Before it is implemented, the European Commission and the two neighbouring countries will receive additional information. In addition, the Netherlands will share information about @MIGO-BORAS with all the member states via the European mutual information mechanism.

⁸ For an overview, see House of Representatives 32761, no 1, 29 April 2011 (Government memorandum on privacy)

⁹ Sections 25 and 28 of the Police Data Act

Launch of @MIGO-BORAS

The system's technical development is almost complete. An extended testing stage will begin in early 2012 and is expected to be complete by mid-2012. The system will then be rolled out within the framework described above.

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