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Obligation to insure motor vehicles

Evaluation of the 'Mulderization' of Section 30, paragraph 2 of the
WAM

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Summary

01 Driving without insurance can result in victims receiving no compensation for damages in the event of an accident. That is why driving a motor vehicle without insurance is an offence under Section 30 of the Civil Liability Insurance (Motor Vehicles) Act (*Wet Aansprakelijkheidsverzekering Motorrijtuigen*, hereinafter 'WAM'). Moreover, paragraph 2 of Section 30 of the WAM states that the party in whose name the vehicle is registered must have taken out an insurance policy for the motor vehicle listed in the vehicle registration system in that name; in other words, this is regardless of whether the vehicle is actually being driven. The current study focuses on the enforcement of this obligation to insure. Up to 1 July 2011, the obligation to insure was enforced using criminal prosecutions; since that date, the obligation to insure has been enforced in line with the Administrative Enforcement of Traffic Regulations Act (*Wet administratiefrechtelijke handhaving verkeersvoorschriften*, hereinafter 'WAHV'). As the WAHV is also known as the Mulder Act, this change is also termed the 'Mulderization' of the WAM. The current study is an evaluation of this Mulderization.

Background

02 Up until mid-2011, the Netherlands Vehicle Authority (*Dienst Wegverkeer*, hereinafter 'RDW') conducted random checks for offences by matching the central WAM register files against the vehicle registration system files. If the RDW found any vehicle's insurance was missing and the party in whose name the vehicle was registered was then unable to prove that they did indeed have insurance on the check date, a fine was imposed via the criminal justice system. The Central Judicial Collection Agency (*Centraal Justitieel Incassobureau*, hereinafter 'CJIB') would send a payment proposal (with a giro collection form) on behalf of the Public Prosecution Service. If no payment was made in response to this payment proposal, the Public Prosecution Service would take the case to the subdistrict court. However, the large number of offenders (243,000 uninsured vehicles¹) and the subdistrict courts' limited capacity for sessions meant that Section 30 could only be partially enforced (63,500 enforced summary offences every year²).

03 The act mentioned in the previous section came into effect on 1 July 2011, as a result of which the WAM was 'Mulderized'. Everyone who has owned a motor vehicle (car, motorbike or moped) with a Dutch licence plate for any period of time but is not insured (in the sense of the WAM) is sent a letter of demand by the RDW asking the person in question to send proof that the vehicle is insured (unlike in the past when only a quarter of the uninsured were contacted). If the party in whose name the vehicle is registered fails to do this, they automatically receive a fine, which is collected by the CJIB. If the fine is still not paid after the first and second notices of payment, the CJIB can deploy various (coercive) measures, such as a bailiff, confiscation of the driving licence, taking the vehicle out of operation and/or committal for failure to comply with a judicial order. The person affected can appeal but has to take the initiative to do this themselves (unlike in the past when they would automatically be brought before the court if they failed to pay).

¹ Lower House, session 2009-2010, 32 438, nos 2 and 3.

² This refers to those summary offences where action was taken with a view to upholding the law. We use the term 'enforced summary offences' (*gehandhaafde overtredingen*) as this is the term used by the relevant partners in the justice system.

Evaluation objective and approach

04 The Ministry of Security and Justice and sector organizations need greater insights into the current state of affairs regarding the Mulderization of the WAM. The ministry therefore decided to have an evaluation conducted under the responsibility of the Research and Documentation Centre (*Wetenschappelijk Onderzoeken Documentatiecentrum*, or WODC). The Centre commissioned research and consultancy firm Significant to carry out a study to provide that insight.

05 The purpose of the evaluation is to investigate:

- a. The extent to which making Section 30 of the WAM subject to the WAHV has led to the set objectives being achieved;
- b. The extent to which there have been (deleterious) side effects for the various parties involved;
- c. What improvements could possibly be introduced to reduce the number of uninsured motor vehicles in an efficient manner and limit the damage from side effects (should there be any).

06 In view of this objective, the following research methods were used:

- a. Qualitative research methods:
 - i. Desk research: studying relevant legislation and other articles on this subject;
 - ii. Interviews: conducting a number of semi-structured interviews with the relevant sector organizations;
 - iii. Group meeting: holding a group meeting to discuss the options for improvement with the relevant sector organizations.
- b. Quantitative research methods:
 - i. Data analysis: data from the CJIB and RDW was linked and analysed to gain a better understanding of the characteristics of the uninsured and their payment performance. A comparison was also made with the registered licence numbers for the general population (based on the vehicle registration system) and the other fines under the Mulder Act (based on the CJIB's annual statistical reports);
 - ii. A segmentation study to determine whether relevant groups of uninsured persons could be identified within the target population in terms of their payment performance and the probability of a repeat infraction.

Findings

07 The aim of the Mulderization of Section 30, paragraph 2 of the WAM has been achieved, with a sharp decline in the number of uninsured vehicles. However it has also had several striking side effects, although measures have to some extent already been taken to deal with these. The remaining uninsured vehicles will still require attention in the future in terms of enforcement and implementation.

The objective of Mulderization has been achieved

08 The number of uninsured motor vehicles picked up by checks of the registration systems has fallen sharply from more than 200,000 on measurement dates shortly before Mulderization to fewer than 100,000

vehicles on measurement dates from 2013 onwards. Even before Mulderization, about half of this decrease was achieved by sending an announcement letter. A temporary non-enforcement period is being applied for uninsured vehicles before actual enforcement is initiated. If this temporary non-enforcement period is taken into account, the number of uninsured vehicles requiring enforcement action fluctuated between 40,000 and 50,000 on the measurement dates in 2015.

09 The intended comprehensive enforcement has been achieved without a proportionate increase in the workload for the criminal justice system (the Public Prosecution Service and the judiciary). Because administrative law is applied, many of the offences detected during enforcement can now be dealt with without the requirement for the direct involvement of the Public Prosecution Service or the judiciary. However, the intensification of enforcement has still led to a sharp increase in the number of cases that have to be dealt with by the Public Prosecution Service and judiciary: the absolute numbers have doubled because of appeals and commitments for failure to comply with a judicial order. Even so, the nature of the WAM-related activities is different compared with the kind of work that the Public Prosecution Service and judges were doing before. That is why it is difficult to make a direct comparison of the workload for the Public Prosecution Service and judiciary before and after Mulderization.

10 The absolute number of cases for the Public Prosecution Service and judiciary has increased. However, the comprehensive, intensified enforcement has been achieved with a relatively lower workload per identified infraction for the Public Prosecution Service and judiciary. The workload for the criminal justice system has decreased in the sense that there are no longer any settlements by the criminal courts (compared to about 50,000 cases annually before); most of the cases can now be handled without the involvement of the Public Prosecution Service and the judiciary thanks to Mulderization. On the other hand, other tasks have taken their place in the form of legal actions for appeals and committals for failure to comply with a judicial order; this initially led to more cases than before Mulderization. However, the number of appeals has fallen over the years to around 30,000 cases a year. The number of requests for committal for failure to comply with a judicial order initially increased sharply but there have been substantially fewer such requests since mid-2015. This decline is connected to increasingly critical assessments within the judicial system and the public debate that has arisen. The approach to such committals has however since been changed; the Public Prosecution Service aims only to demand committals for failure to comply with a judicial order for those individuals who can pay but do not want to. With the roll-out of the new approach, the requests for committal are once again increasing.

- 11 However, there is now more work elsewhere:
- a. An increase by a factor of four in the checks of the registration systems by the RDW (around 250,000 in 2014)
 - b. Settlement by the CJIB of the fines resulting from the registration systems checks (around 192,000 in 2014).
 - c. Application of the coercive measures of taking the vehicle out of operation and committal for failure to comply with a judicial order:
 - i. These coercive measures require the police to be deployed much more often (about 66,000 times in 2014), while deployment of the police for the WAM was limited before the change..

- ii. The State Property Department (Domeinen Roerende Zaken) has to be involved when a vehicle is taken out of operation.
- iii. Mulderization has also led to an influx of individuals who have been committed for failure to comply with a judicial order (about 5,500 in 2014) for the Custodial Institutions Agency (Dienst Justitiële Inrichtingen, DJI), which is far more than the number of custodial sentences and imprisonments for non-payment of fines before Mulderization.

There is a striking group of uninsured remaining that demands action

12 The remaining uninsured (varying between 40,000 and 50,000 vehicles requiring enforcement in 2015) form a striking group, as is clear from a number of characteristics:

- a. Payment performance for WAM fines is distinctly worse than that for WAHV fines in general. Less than half the WAM fines are paid within one year while the proportion for WAHV fines in general is around 95%. This is reflected in the relatively large share of WAM fines in the recovery and coercive measure phases. WAM fines (around 192,000 to 331,000 a year) form a few per cent of the total number of WAHV fines every year (from 1.9% to 3.4%). However in the peak year 2013, WAM fines made up almost a third of the new recoveries with writ of execution and orders for vehicles being taken out of operation, while about a quarter of new orders for confiscation of driving licences, committals for failure to comply with a judicial order and pro forma coercion were accounted for by WAM fines. In connection with this, WAM fines were also an important component in the issues surrounding committals for failure to comply with a judicial order. The recovery and coercive measures aimed at collecting the fines are less effective in the case of WAM fines than for the WAHV in general, with the exception of committals for failure to comply with a judicial order. This means that the justice organizations have expended considerable effort in the coercive phases to collect the WAM fines but this is relatively less likely to result in payment.
- b. There is a high proportion of repeat infractions and these parties with a vehicle registered in their name also often have one or more unpaid fines. The high proportion of repeat infractions is evident from the fact that since 2012, more than half the WAM fines were imposed on parties who had already had a WAM fine. In 85% of these repeat infractions, one of the previous fines was still unpaid. The enforcement method plays a role here. Checking the registration systems means that the probability of being caught is 100%, and this is followed by a high initial fine. If the party affected does not take appropriate action, surcharges follow, causing the fine to increase, while the regular checks of the registration systems result in an automatic accumulation of fines.

Repeat infractions do not lead to settlements through the criminal courts, but there are developments in the enforcement and execution

13 The promise made to the Dutch Lower House of Parliament that repeat infractions would be settled by the criminal courts has not been implemented. The justice system organizations differ in their views on the possibility and desirability of enforcement through the criminal courts. Possibilities have been seen for dealing with an infraction identified by the RDW within the Mulder Act framework if it is a one-off infraction and enforcing it through the criminal courts if it is a repeat infraction. At the same time, doubts have been expressed about the desirability of such a hybrid system. Within the Mulder system, limitations are seen for a

repeat offence scheme because of the irrevocability of the previous offence, the accumulation of offences and the transfer of ongoing cases to the criminal courts. If repeat infractions were to be enforced through the criminal courts, that would require great care in the implementation and it would have both benefits and disadvantages. On the one hand, the criminal law route allows for a more differentiated approach that takes account of personal circumstances and other sanctions such as a community punishment order or imprisonment. On the other hand, it is not possible at present to arrange the settlement in the criminal courts as efficiently as the Mulder process, so this could lead to an increase in the workload for the Public Prosecution Service (and the judiciary).

14 However this policy area has seen shifts in the past few years and the need to collect fines in a socially responsible manner is receiving more attention. This is evident in various initiatives (and pilot projects), focused in particular on the execution:

- a. The 'Hardship cases pilot' (*pilot schrijnende gevallen*), which has resulted in a multidisciplinary team at the CJB that delivers tailored solutions for people who are unable to pay;
- b. The option of paying in instalments has been introduced;
- c. Proportionate application of committals for failure to comply with a judicial order. The committal for failure to comply with a judicial order is no longer a standard coercive measure; instead, a request is only submitted to the court if a reasonable case can be made that the person affected does not want to pay. The use of committals for failure to comply with a judicial order has fallen considerably since;
- d. Extension of the options for terminating collection of the fine with an amicable arrangement;
- e. More leniency in the case of small deviations or writing errors;
- f. The RDW has started a pilot in which the party in whose name the vehicle is registered is contacted after the third infraction is identified;
- g. Regarding the measure of taking a vehicle out of operation, a pilot project has started in which wheel clamps are used (rather than the vehicle being impounded).

Risk groups can be identified for infractions and payment performance

15 Based on the analyses, certain groups of vehicles and individuals in whose name the vehicle is registered have a higher risk of being flagged as (having) an uninsured vehicle compared to the vehicle registration system population as a whole. The risk groups are parties registered as follows:

- a. Mopeds;
- b. Vehicles between eleven and twenty years old;
- c. Vehicles after the expiry of a non-standard status, such as suspension of the registration or theft of the vehicle;
- d. Who are natural persons;
- e. Who are younger than 46, and in particular individuals who are younger than 26.

16 A repeat infraction is a sign that the vehicle was not insured after the initial infraction was identified and no other appropriate action was taken ending the obligation to insure (such as suspending the registration, selling the vehicle or scrapping it).

17 The segmentation study aimed at identifying risk groups revealed an increased risk of repeat infractions (within six months) for:

- a. Persons with outstanding fines or sanctions in the CJIB registration systems;
- b. Mopeds;
- c. Persons who have already received multiple notifications of WAM infractions or fines.

The probability of a repeat infraction is particularly high with a combination of the above characteristics.

18 Finally, risk groups for poor payment performance after a fine were identified in the segmentation study. Poorer payment performance (in the first twelve months) is seen for:

- a. Persons with outstanding fines or sanctions with respect to the CJIB;
- b. Persons who have previously received WAM fines (particularly if they are still outstanding).

19 Better payment performance (in the first twelve months) is seen for the following groups:

- a. After the first offence;
- b. After suspension of the registration has ended;
- c. In the case of natural persons;
- d. In the case of persons who have a driving licence.

The study offers suggestions for the future

20 A number of aspects and suggestions for the future came out of the discussion of the study results and views on the future with representatives of the sector partners and external experts:

- a. Reconsider settlement in the criminal courts for enforcement of Section 30, paragraph 2 of the WAM. Such a reconsideration is also in line with statements made by the minister in the Lower House prior to Mulderization³. The number of uninsured vehicles has fallen substantially, yet at the same time there is still a group remaining with a high proportion of repeat infractions and a problematic process for collecting the fines that are imposed. In the criminal justice system, it is possible to take personal circumstances into account and impose alternative sanctions to the fine, such as a community punishment order or a custodial sentence. Implementation of this option would require further investigation of the possibilities, limitations and consequences of settlement in the criminal courts of all infractions, only the repeat infractions or only infractions involving specific risk groups. It is important here to consider the wider perspective of developments in punishment orders issued by the Public Prosecution Service and a progressive regime for fines in general;
- b. Investigate and flesh out the details of a differentiated approach in identifying and dealing with offences. Personal contact with risk groups (with repeat infractions and/or outstanding sanctions) can help in tracking down and resolving problems. It is important here that this personal contact really can result in a differentiated approach;
- c. Prevent a new influx of uninsured vehicles. Perhaps a direct link could be made to the insurers when the name is registered and on expiry of a suspension of registration so that the party in whose name the vehicle is registered does not forget the need to insure the vehicle. The RDW's information position could be improved with regard to the status and outcome of previous fines and an obligation flag based

³ Lower House, session 2010-2011, 32 438, no. 3.

on outstanding cases at the CJIB. Additional information could facilitate a differentiated approach and avoid accumulation of fines;

- d. Carry out a study of the perspectives of citizens. A better understanding of the target group is important in order to optimize the enforcement and flesh out a differentiated approach. The effectiveness of the current approach to enforcement seems to be limited in the case of some of the target group and it could even aggravate individual problems;
- e. Underlying debt problems are seen among some of the target group where both the causes and the solutions are largely beyond the scope of the enforcement organizations. It is important to address the debt issues as a social problem and to take developments in this regard into account when optimizing the enforcement of the obligation to insure and fleshing out a differentiated approach in that enforcement. This can be done for example by proactively alerting the individuals affected to the option of debt counselling. Alternatively, the public prosecutor can order appointment of an administrator where applicable.
- f. Certain aspects of the standard process could be reviewed. The study of the WAM has shown that these cases form a substantial proportion of the WAHV cases that end up in the recovery and coercive measure phases (nearly a third of all cases in these phases in 2013). The aforementioned aspects requiring further attention are the size of the fine, the security deposit for an appeal in the subdistrict court, more explicit communication about the recovery and coercive measure phases, the options for debt counselling and repeat court orders.