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Evaluatie van de Wet biometrie vreemdelingenketen

EINDRAPPORT

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Summary

This report presents the findings of the evaluation of the Dutch Act on Biometrics in the Immigration Process (Wet biometrie vreemdelingenketen). The research was conducted by the department of Constitutional Law, Administrative Law and Public Administration at the Faculty of Law at Groningen University in collaboration with Pro Facto, a research institution in Groningen. This act, the full title of which is the *Act of 11 December 2013 amending the Immigration Act 2000 in connection with the increased use of biometrics in the immigration process in connection with improvements in establishing immigrants' identity*, amended the Immigration Act 2000 on 1 March 2014 making it possible to increase the use of biometrics in the immigration process.

Background

The Dutch Act on Biometrics in the Immigration Process contains an evaluation clause in Article II. On grounds of this clause the Minister of Security and Justice is required to report to the States General, within five years after the act enters into force, on the effectiveness and the effects of the act in practice and to communicate the ministry's position regarding the desirability of full or partial continuation of the act. At the request of the Upper House of the Netherlands Parliament the State Secretary of Security and Justice has confirmed that this evaluation can take place within three years. The evaluation is also being conducted pursuant to the sunset clause included in the act: specifically, the clause stating that the legal provisions introduced by the Act on Biometrics in the Immigration Process will be automatically repealed.

In addition, when the act was debated in the Upper House of the Netherlands Parliament the motion submitted by Strik et al was adopted.⁹¹ This motion requested that the extent to which the legislative amendment was in fact needed for and actually resulted in the prevention of identity fraud, the extent to which the legislative amendment has resulted in the use of biometric data in other criminal proceedings and the extent to which the data in the central databank are indeed reliable and of sufficiently high quality, should at the very least be investigated during the evaluation.

Main research questions

The aim of the evaluation research is essentially to obtain insight into the extent to which the Act on Biometrics in the Immigration Process has achieved the objectives formulated by the legislator, inasmuch as it is possible to make any statements about this now (see section 1.4 and 1.5). This research is intended to enable the minister to adopt a position on the desirability of extending the act.

The problem reads as follows:

For what purposes are biometric identifiers of immigrants used, are the statutory requirements met when processing biometric data and do these data satisfy the criteria of quality and reliability and to what extent are the objectives envisaged by the legislator in the Act on biometrics in the Immigration Process achieved?

⁹¹ EK 2013/14, 33.192, G.

The research question has three components:

- I. What objectives did the legislator intend to achieve with the introduction of the Act on Biometrics in the Immigration Process, what policy theory are these objectives based on and to what extent is the policy theory justified ex ante?
- II. Do the different actors in the process act in accordance with the legal requirements when they take and register biometric data on the one hand and when they use these data on the other hand? Do the data taken satisfy the quality and reliability criteria?
- III. To what extent, since 1 March 2014, have the envisaged effects and any secondary effects been achieved and to what extent can this be attributed to the possibility offered by the act to take biometric data?

Structure of the research and accounting

The research is thus based on three separate investigations: a policy reconstruction (question I), a process evaluation (question II) and an effectiveness analysis (question III). The evaluation clause in the act is the basis of the first and third research question. The second question is mainly based on the elements in the motion submitted by Strik et al. Several research activities were undertaken to collect and analyse data. During a document study, among other documents, the act and accompanying texts, parliamentary papers, related (European) legislation and regulations and diverse reports and articles were studied as well as documents (protocols, reports etc.) that could provide a picture of the act's implementation in practice. Secondly, twenty interviews were held with respondents who were involved in the formation of the act, or in the detailing or implementation of the act. The third activity was an analysis of numerical data on the use of the databank in which immigrants' data are stored. As a fourth research activity a file study was conducted based on anonymised biographic data.

During the research it became apparent that the original intention to make a full evaluation is currently not possible. Because the evaluation started shortly after the act came into force, the consequences within the immigration process cannot yet be properly observed. In addition it has emerged that many actors in the process do not yet register the data needed for this research at the required level, nor according to a uniform method. Thirdly, a file study during which a small selection of fingerprints would be assessed in terms of quality has proved to be impossible because of legal objections at the Ministry of Security and Justice and because of technical complications. The result of this is that insufficient information could be collected with regard to the implementation of the motion submitted by Strik et al.

Policy reconstruction

The reconstruction of the policy theory serves as the basis for the evaluation. To be able to make a judgement about the extent to which the objectives of the act have been achieved we need to know exactly what practical objectives were envisaged. In addition

we need to obtain insight into the (implicit and explicit) assumptions underpinning the choice of the envisaged objectives and the methods deployed. This policy reconstruction is described in Chapter 2.

It is established that the act provides for three methods (taking ten fingerprints and facial images, central data storage and linking these data to a single identity) for achieving the ultimate objective, increasing the effectiveness and efficiency of the immigration policy in practice. Intermediate objectives are to increase the reliability of establishing a person's identity and of identity registration and to remove irregularities during the establishment of a person's identity.⁹² The researchers observe that these objectives are not formulated in a SMART way. In response to the question how well the selected instruments were founded empirically, we conclude that there is hardly any evidence that these are founded on research data.

The decision to use the fingerprints and facial images as biometric data seems to be primarily based on the argument that current registers at both national and European level are also built on the basis of these data. This track-dependence is understandable from the point of view of effectiveness and efficiency, especially given the context of the act as a national measure to supplement European legislation.

Legal requirements

In Chapter 3 the legal framework relating to the use of biometrics in the immigration process is described, as amended by the Act on Biometrics in the Immigration Process. This defines which actors in the process are allowed to use biometrics pursuant to the Act on Biometrics in the Immigration Process when they identify and verify the identity of an immigrant. For applications for provisional residence permits and residence permits there is an entirely new procedure for the use of biometrics. In several other processes the use has simply been expanded, as a result of which, for instance, data that have been taken can also be stored in the Basic Facility for Immigrants (BVV) and can be used in other processes.

It is also apparent that the act and the underpinning regulations contain more requirements regarding the taking and processing (including storage and removal) of data. The processing of these requirements in the PIL⁹³, that applies as work instructions for the actors in the process and provides a good picture of the practical working methods, is also assessed. From this it has not emerged that these requirements are not taken into account in practice by the process actors involved. The work instructions set out in the PIL are in line with the legal requirements set out in legislation and regulations. The file analysis largely confirms this picture, although in three of the 88 cases studies it appears that data have been taken from immigrants with a nationality in cases in which this is not legally permitted.

⁹² Although the parliamentary papers refer to identity and document fraud, because in many cases it cannot be proved that there is any question of intent, during this research the term 'irregularities (in relation to identity)' is used.

⁹³ The Protocol on Identification and Labelling (PIL) describes a standardised working method for identifying, registering, changing and verifying personal data and the destruction of biometric data in the immigration process.

Reliability and quality of data

Chapter 4 looks at the reliability and quality of biometric data and more specifically at the finger prints that are stored in the Basic Facility for Immigrants (BVV). Based on the fact that the success rate of verification efforts has fallen slightly in the period since 2014, the first conclusion is that there is room for improvement with regard to the quality of this. The second conclusion is that there is not a systematic, central system of quality control with the result that there is not a complete picture of any quality differences between prints that have been taken by the different actors in the process and/or in different periods. The third conclusion is that the fact that responsibility for (improvements in) the quality of fingerprints lies with the different, individual actors in the process can result in ineffectively low investment in this area due to the spill-over effects (externalities).

Although a file study of biometric data did not go ahead because of legal and technical complications, in the report several recommendations are made for later quality studies and controls based on standards applied in the Netherlands and abroad.

The use of biometrics in the immigration process

Chapter 5 examines the use of biometrics in the immigration process mainly based on an analysis of data on the number of registrations of biometric data. The implementation of the Act on Biometrics in the Immigration Process has, as expected, led to a sharp increase in the number of fingerprints and facial images registered, particularly during the regular immigration flow. Before the act entered into force between 3,000 and 6,000 sets of fingerprints were stored each quarter in the BVV (on average: 4,992). After the act came into force this varied between 23,000 and 47,000 sets of fingerprints (on average: 32,997). A less sharp rise was observed with regard to facial images, specifically, on average an increase from 129,786 to 176,563 facial images each quarter. It is quite conceivable that as a result immigrants can be verified on the basis of fingerprints and thus helped more quickly, but there is currently no clear, integrated picture of the deployment of staff and lead-times.

As regards preventing irregularities with respect to identity the report observes that hardly anything has changed compared with the situation as it was before the act entered into force. At the majority of actors in the process there is still no structured and complete registration of suspected or detected irregularities. There is therefore no uniform registration of such situations in the process as a whole. Consequently the scope of this problem remains difficult, if not impossible to estimate and neither can anything be said about developments in this area. It can therefore be firmly stated that at the very least the expectation that the implementation of the act would produce a better picture of the scope of the problem has not been met.

The research did not find any irregular consultation of data.

Conclusions and recommendations

It is concluded that several assumptions deriving from policy theory cannot be realised or substantiated. For example, the extent to which the implementation of the act has contributed to reducing irregularities with regard to identity has not become clear. The Act on Biometrics in the Immigration Process ought to have led to a better picture of the irregularities with regard to identity in the immigration process. This objective has not been achieved. The registration of irregularities is still largely fragmented and non-uniform. What is, however, clear is that in line with the objective of the act, more biometric data of more immigrants is being stored in the BVV. This ought to mean that more irregularities with regard to identity come to light. But there is no system for recording this numerically.

This is striking because when the act was debated it was noted that there was no data on the scope of irregularities. At that time the minister assumed that the scope was probably significant and that the implementation of the act would provide more insight into this. However, since then nothing or very little has been invested in adjusting registers and procedures in order to measure the scope of regularities and fraud and the extent to which there are any improvements in effectiveness.

Neither can the actors in the process provide any clearly substantiated estimations about the (increase or drop in) irregularities since the act entered into force. Based on the data acquired it is unclear what effect this act has had on improving the reliability of establishing and verifying a person's identity and preventing irregularities, never mind on the envisaged objectives. In other words, the effectiveness of the act is (still) unclear. To make a proper estimation of the efficiency of the immigration process good information about the scope of irregularities during the process is needed. The scope of irregularities in the immigration process is decisive for the deployment of second and third-line help and thus for staffing (input), but the scope of irregularities is also an indicator of the (quality of) the output during the process.

In general it can be stated that there were hardly any indications found that actors in the process have not acted in conformity with the legal requirements. Processes are properly safeguarded in a widely supported protocol (the PIL) that follows these requirements. The file studies do, however, show that in three of 88 cases biometric data are stored with a nationality that falls outside the scope of the statutory regulation. The combination of the two observations that on the one hand the primary responsibility for the quality of fingerprints lies with the actors in the process and not centrally, while on the other hand there is no central and comparative study of the quality, is, at the very least, a concern. When the effectiveness and efficiency of the immigration process is considered to be a major objective, the quality system should be improved in relation to both points.

To conclude, three recommendations are formulated:

1. Irregularities/fraud cases should be registered according to a uniform system, so that the effects of the use of biometrics become clear and it can be assessed whether this use is proportional.

2. The quality of fingerprints should be monitored, so that the need and desirability of improvements processes based on a complete and integrated picture can be rationalized.
3. Additional research is needed to clarify the extent to which any quality improvements to be introduced produce the desired result and the extent to which the act actually contributes to the envisaged objectives.