

Summary

Second round of the Monitor to evaluate ANPR legislation, Section 126jj of the Dutch Code of Criminal Procedure

The Act on 'the Recording and storage of vehicle registration data by the police' during the first two years after entry into force.

The Dutch Act on the 'Recording and storage of vehicle registration data by the police'²¹ (*wet 'Vastleggen en bewaren kentekengegevens door de politie'*) entered into force on 1 January 2019. Based on the new Section 126jj of the Dutch Code of Criminal Procedure (*Wetboek van Strafvordering*) (referred to in the rest of the report as '126jj'), the police may record and store the vehicle registration data of passing vehicles using designated cameras for a period of 28 days. The data may be inspected during that period for the purpose of investigating a crime or persons at large. The Act contains an evaluation and sunset clause. In principle, the power will be in force for three years unless decided otherwise by Royal Decree. Based on the evaluation, it will be determined whether the power will be maintained. The final evaluation is based on two monitor reports. The present study is the second monitor report and focuses mainly on new elements that were not highlighted in the first monitoring year, such as the implementation of the law by the Royal Netherlands Marechaussee, the handling of international requests and a new selection of investigation cases in which 126jj was used. The first monitor report was published in 2020 (Van Berkel et al., 2020²²).

Research question

This second monitor report follows the format of the first monitor report and has the same research questions (Van Berkel et al., 2020, p. 14-15). The central research question for this study is as follows:

In what way are number plates that have been stored on the basis of the Dutch Act on the 'Recording and storage of vehicle registration data by the police' used in investigations and what role do the data play in investigations?

The central research question will be answered on the basis of the following research questions:

- Extent of number plate recording and requests
 - How many number plates are recorded on camera?
 - How many requests for vehicle registration data are submitted?
 - For what types of crimes are requests for vehicle registration data submitted?

²¹ In full: 'Amendment of the Code of Criminal Procedure in connection with the regulation of the recording and storage of vehicle registration data by the police'.

²² Berkel, J.J. van, Eeden, C.A.J. van, Poot, C.J. de. (2020). *Het gebruik van bewaarde kentekengegevens in de opsporing: De wet 'vastleggen en bewaren van kentekengegevens door de politie' een jaar in werking*. Den Haag: WODC. Cahier 2020-13.

- Implementation process
 - How does the implementation process of storing, requesting and providing vehicle registration numbers proceed in practice?
 - To what extent are there bottlenecks in the implementation process?
- Role in investigations
 - For what purposes are requests for vehicle registration data submitted?
 - What role does the use of vehicle registration data play in investigations?

Research methods

This study combined a number of different research methods. In addition to building on the extensive literature review carried out as part of the first monitoring round, documents were once again analysed. Desk research was carried out on documents provided by the police and the Public Prosecution Service. These included process descriptions and records of the type of 126jj searches carried out. In addition, this monitoring round again used records from the Argus police system in which all 126jj requests are stored. This system also stores all ANPR data in the context of 126jj. In addition to this desk research, interviews were conducted with investigators at national and regional level. Most of these were 'new' people, however we also spoke to people who were interviewed as part of the first monitoring round. This provided the opportunity to obtain a clear picture of the developments that took place over the entire monitoring period. A total of 74 officials were interviewed. Finally, for this second monitoring round, a list of judgments was produced on Rechtspraak.nl. This involved performing a comprehensive search on the rechtspraak.nl database for criminal cases in which Section 126jj was used.

Camera plan

In early 2020, the police had 931 fixed ANPR cameras at their disposal, of which 809 (86.9%) were designated as 126jj cameras²³. In early 2021, the police had approximately 999 fixed ANPR cameras at their disposal, of which 919 (92.0%) were designated as 126jj.

Every year, a camera plan is published that includes the ANPR cameras used within the scope of 126jj. The 2021 camera plan includes 461 126jj sites, whereas the 2020 plan included 299 sites. The significant increase in locations is largely due to the fact that there are often multiple ANPR cameras at one location, covering several lanes of traffic. For 2021, it has been decided to break down some of these camera locations by driving direction or exit. Pursuant to the law, the camera plan contains a justification as to why each ANPR location is included in the camera plan. These justifications have been drawn up, but, as noted in the first monitor report, are not part of the camera plan and are not public.

The cameras managed by the Royal Netherlands Marechaussee are located at national borders and airports. The Royal Netherlands Marechaussee currently manages

²³ These figures differ from the first monitor report. The total stated in the first monitor report included sites that have now closed. The first monitor report also included virtual sites: locations where an ANPR camera is used for multiple lanes and lanes without a physical ANPR camera are assigned a 'virtual' ANPR camera. In this report, the figures for both years have been corrected by including only active and unique camera locations.

115 ANPR cameras, all of which are designated as 126jj cameras. As noted in the first monitor report, there was a lack of clarity in the initial period about whether the Royal Netherlands Marechaussee or the police were responsible for registering Royal Netherlands Marechaussee ANPR cameras in the camera plan. As a result, certain ANPR locations were not included in the camera plan in the initial period and these ANPR cameras could not be used for the deployment of 126jj. This problem was resolved in the second year. The Royal Netherlands Marechaussee drew up its own camera plan, which was merged with that of the police.

Number of records

The increase in the number of 126jj cameras has also resulted in an increase in the number of recorded passages. There has been a smaller rise in the number of unique recorded passages. On average, 4.3 million passages per day were recorded in 2019, of which around 1.9 million passages involved a unique number plate. This means that every vehicle recorded passed an average of two (2.26) 126jj ANPR cameras. As this is an average, some people may pass only one ANPR camera on a route, while others pass several. In 2020, an average of 5 million passages were recorded per day, of which around 2 million involved a unique number plate. This means that every vehicle recorded passed an average of 2.5 126jj ANPR cameras. Due to COVID-19, the figures since 2020 are not fully representative of the total number of passages recorded under non-COVID conditions.

Number of requests

In 2020, a total of 2102 126jj requests were submitted, of which 1953 were processed. This is almost double the number of requests in the first monitoring year. One of the reasons for this increase is that some units did not have the organisation surrounding 126jj in place until later in 2019 and were therefore only able to carry out 126jj searches at a later time. In addition, 126jj has been rolled out in some units in phases based on the severity of the offence.

The law provides for the possibility of issuing an order by telephone in urgent cases. The percentage of orders made by telephone has remained constant: in both the first and second monitoring years around a quarter of all requests were based on a telephone order. This percentage is attributed to the nature of the offences for which 126jj can be deployed. These are usually more serious cases where there is a greater urgency to secure data in a timely manner. Verbal orders must be followed by a written order within 72 hours. In the case of 126jj, this order must also be entered in Argus (the system used for 126jj searches) within 72 hours. In the first monitoring year, the written order was added to Argus too late in 53.4% of the verbal orders. In 2020, 44.3% of written orders were entered into the system late. Based on the available data, however, it is not clear whether the written order was issued too late or only entered into Argus too late. Failure to meet the three-day deadline can result in a breach of procedural rules. In practice, this has not yet led to any discussion at trial.

Organisation of the 126jj process

Compared to the first monitoring year, little has changed in terms of the organisation of the 126jj process within the police units. Implementation of the power has been entrusted to the units. Within each unit, authorised investigating officers are designated to carry out 126jj searches. In April 2021, there were 147 authorised investigating officers, as opposed to 126 authorised investigating officers in May 2020. Authorised investigating officers are only permitted to carry out a 126jj search on the orders of the public prosecutor and must not themselves be involved in the investigation. A 126jj application is submitted to the shared Special Investigative Powers division. The Special Investigative Powers division is responsible for processing requests relating to the use of special investigative powers.

The organisation of the 126jj process and experiences of the Royal Netherlands Marechaussee do not differ substantially from the organisation and experiences of the police. The main difference is that the Royal Netherlands Marechaussee does not always use the shared Special Investigative Powers division, but depending on the type of investigation can also have an order drawn up directly by its 'own' public prosecutor or public prosecutor's clerk. In some cases, this process is faster than when a 126jj request goes through the shared Special Investigative Powers division. Another difference is that the authorised investigating officers at the Royal Netherlands Marechaussee all work at the information desk and are therefore not involved in investigations.

This monitor report also took a closer look at international 126jj requests. International 126jj requests are usually received by an International Legal Assistance Centre (IRC). The IRC assesses whether the requested data constitutes a 126jj request. If so, a Dutch public prosecutor will draw up a 126jj order. A request for legal assistance in judicial matters (a conventional request for legal assistance or a European Investigation Order) from the country concerned is required in order to draw up the order. After an order is drawn up, the search process follows the route of a 'normal' 126jj search.

The first monitor report stated that no privacy audit had been conducted for 2019. The purpose of the privacy audit is to examine whether the provisions of the Police Data Act and the safeguards of 126jj have been adequately implemented. However, an audit was carried out for the second monitoring year. The 2020 audit focuses on the design and existence of the necessary processes to meet the safeguards. The 2021 audit will examine the extent to which these processes have worked in practice. The results of the 2020 audit are included in the evaluation report.

Bottlenecks in the 126jj process

The use of 126jj is subject to a number of safeguards. These include manual checking of number plates and rendering individuals and non-public places unrecognisable (blurring) in photographs. As noted in the first monitor report, this blurring process is very time-consuming in practice. A common approach is that for large-scale requests, only the data is provided in the first instance, without the overview photos, and in the event of a specific follow-up request, the photos are blurred before being issued. An ongoing concern is the fact that in search queries that do not focus on a specific number plate, the number plates are not always checked.

As in the first monitoring round, many respondents mentioned the blurring of individuals in photographs as a limitation of the power. Officers conducting Argus searches are therefore regularly asked to provide the unblurred photographs. This sometimes leads to complex discussions, but in most cases the officer conducting the search is able to explain why it is not possible. In some cases, the question is discussed at a higher level within the organisation. This has resulted in the original, in other words pre-blurred, photographs being provided in two confirmed cases. Within both the police and the Public Prosecution Service, these cases have led to a broader discussion on whether it is desirable to issue the photographs regardless in exceptional cases. Both organisations have concluded that there are no legal grounds for exception for obtaining or providing unblurred photographs. Since these two cases, as far as is known, this has not happened again. However, there is still a desire within investigation teams to be able to obtain unblurred photographs when serious offences are involved.

Types of crimes

As in 2019, there are four types of offences for which 126jj is most commonly used. These are theft and robbery, drug-related offences, burglaries, murder and manslaughter. Theft and robbery include street robbery, theft from vehicles and shoplifting. Drug-related offences involve the possession, production and trafficking of drugs. This often relates to hard drugs. Burglaries are primarily domestic burglaries. The relative importance of these four types of offences has changed compared to 2019, however it is difficult to draw a comparison because the selection of units has changed. Some units deal more with a particular type of crime and therefore conduct more searches related to this type of crime. For example, due to its remit as laid down in Section 4 of the Police Act, the Royal Netherlands Marechaussee handles a large number of cases related to human trafficking, but did not feature in the 2019 selection.

Investigation process

There are no discernible major developments in the investigation process compared to the first monitor report, which stated that 126jj can often provide pertinent leads for investigations. The technique is also often used to secure data. In addition, it is frequently used alongside other investigative techniques, and the data generated often provide supporting information that can give direction to the investigation.

Specifically in the case of the Royal Netherlands Marechaussee, 126jj is often used for a number of specific types of offence, related to the tasks assigned to this organisation under Section 4 of the Police Act. The power is mainly used in relation to human trafficking and theft. In these types of cases, suspects are regularly caught in the act and 126jj is used to gather supporting evidence, for example to find out whether the suspects have previously travelled a certain route.

As stated in the first monitor report, 126jj is often used alongside other investigative techniques. This is also reflected in the cases that have come to court. In those cases in which 126jj was cited, the judicial finding of facts was always found to have been established with the aid of a number of special investigative techniques or witness statements. Suspects also sometimes make a confession, which means that special investigative techniques used, including 126jj, are not reflected in the

judgment. However, some respondents indicated that 126jj can play a significant role in eliciting a confession.

Evaluation

The evaluation of the Dutch Act on the 'Recording and storage of vehicle registration data by the police', which looks in greater detail at the extent to which the power is used in accordance with the legal frameworks, how the power is used in the investigation process and the outcomes, will be published at the same time as this monitor report. The evaluation is based on the information collected in the two rounds of the Monitor (2019 and 2020).