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Summary of the third evaluation of the Act on Biometrics  
in the Immigration Process

Through the Fingers

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# Summary

## Introduction

The admission, authorization, expulsion and supervision of foreign nationals in the Netherlands are regulated by the Aliens Act 2000 (Vreemdelingenwet (Vw) 2000). This Vw 2000 was amended with the Act on Biometrics in the Immigration Process (Wet biometrie in de vreemdelingenketen, Wbvk) as of March 1, 2014. The legislator deemed this amendment necessary to improve the reliability of identity verification, thereby allowing for more effective fraud prevention.

The Wbvk aims to increase the efficiency and effectiveness of the execution of immigration policy. This should primarily be achieved by addressing ‘irregularities regarding identity.’

The Wbvk forms the basis for the collection and processing of biometric data (i.e. facial images and fingerprints) of foreign nationals and the central storage of this data in a central shared database with Basic Information on Applicants (in Dutch: Basisvoorziening Vreemdelingen, BVV). Additionally, the data is linked to a unique registration number (the V-number) under which the foreign national is registered. The Wbvk aligns with various developments in the European Union (EU) in the area of registration and identification using biometric data. Several European regulations have since been adopted, which include provisions for the registration and identification of foreign nationals using biometric data.

The Wbvk contains an evaluation clause that stipulates that a report on the effectiveness and impact of the act in practice should be made within five years of the act's entry into force. The evaluation must address the desirability of the act's continued full or partial operation. The act also includes a sunset clause, causing the provisions introduced by the Wbvk to automatically expire after seven years.

At the request of the Senate of the Dutch Parliament, the act was first evaluated in 2016-2017. It was then determined that a follow-up evaluation was needed to better assess the effects of the Wbvk. This second evaluation was conducted in 2018-2019. The first two evaluations pointed out that the importance of using biometrics was acknowledged by the government organizations involved in the execution of immigration policy (hereafter referred to as ‘chain

partners'). Due to the Wbvk's interconnectedness with European developments and processes, it was difficult to isolate the effects of the Wbvk's provisions from other factors. The effectiveness of the Wbvk could not be established for four reasons:

- The objectives of the act are not sufficiently operationalized.
- The preventive effect of the act is nearly impossible to measure.
- A baseline measurement was never conducted, making it impossible to compare the current situation with the previous one.
- There is no quantitative, uniform data available on identified irregularities concerning identity.

After the second evaluation, the Wbvk was extended by five years (until 2026). It was stipulated that a new, third evaluation must provide a report on the necessity, effectiveness, and impact of the Wbvk. This report presents the results of this third evaluation, addressing the following two research questions:

1. How does the Wbvk relate to other relevant (European) laws and regulations?
2. How does the Wbvk contribute to the identification of foreign nationals and thus to the functioning of the Vw 2000?

## Research method

The research was conducted through three sub-studies. The first sub-study involves a legal analysis of the relationship between the Wbvk and other relevant (European) laws and regulations. In this sub-study, developments regarding European regulations were described and analyzed. Case law relevant to the functioning of the Wbvk was also analyzed. Additionally, a description was also provided of all (legislative) measures that the Netherlands has taken to comply with the obligations arising from European regulations.

The second sub-study focuses on the contribution of the Wbvk to the functioning of the Vw 2000. For this purpose, we examined the registration, storage, and management of biometric data. We then investigated how the data is used and how the quality of the data is monitored and ensured. We looked at what information is available regarding identified irregularities and what information can be obtained from this about the effectiveness of the Wbvk. Finally, we collected the experiences and views of government organizations in the immigration chain to qualitatively assess the contribution of the Wbvk to the functioning of the Vw 2000.

The third sub-study involves a final analysis of the findings from the first two sub-studies. This analysis leads to conclusions about the contribution of the Wbvk to the implementation of European systems in the areas of security and borders, and to the implementation of the Vw 2000.

## Sub-study I: Relationship of Wbvk to other relevant (European) legislation

### Description of the Wbvk

The findings of first sub-study are the subject of Chapter 3 of this report. This chapter begins with positioning the Wbvk within the Vw 2000 and its elaboration in subordinate regulation. It concerns the collection and processing of certain biometric data for identity verification

(Article 106a Vw) of the foreigner, and the storage of biometric data in the Foreign Nationals Administration (Article 107 Vw).

Biometric characteristics are used in several processes within the immigration chain: in border control and supervision and in assessing applications for an asylum residence permit, a transit visa, a short-stay visa, a provisional residence permit (*machtiging tot voorlopig verblijf*, or *mvv*), a regular residence permit, the integration exam, and return and departure. In some cases the Wbvk served as a supplement to European regulations; in other cases, the collection of biometric characteristics was already exclusively regulated by the European legislator, leaving no role for the Wbvk. In cases where the European legislator had not established regulations, the Wbvk has been applicable since 2015.

### **Relevant European Developments**

We identify several relevant developments at the European level. Due to the Borders and Security program, announced by the European Commission in 2015, the Wbvk has become less relevant in some processes in the Dutch immigration chain (hereafter referred to as ‘chain processes’). This particularly concerns border control and management processes, as well as supervision, return, and departure. The European legislator aims to create a comprehensive system of border controls and generate an overview of foreign nationals who are either lawfully or unlawfully residing in the territory of the EU. The more comprehensive this system becomes, the smaller the role for the Wbvk.

Since the second evaluation of the Wbvk, amended European regulations in this area have been adopted by the European Parliament. Serious efforts have also been made to set up eu-LISA, which is responsible on the EU level for operationalizing the SIS (Schengen Information System), VIS (the European Visa Information System), Eurodac (the European system for comparing asylum seekers' fingerprints), the EES (Entry Exit System), ETIAS (Travel Authorization System) and two regulations aimed at achieving interoperability. Currently (Summer 2024), only the amended SIS is operational. The other amended information systems have faced delays due to technical and legislative reasons. The developments surrounding these regulations and systems are extensively described in paragraph 3.3.

On November 29, 2023, the Dutch Implementation Act for EU Regulations came into effect. This act ensures that, among other things, the SIS, VIS, EES, and the two regulations on interoperability can be implemented at the Dutch national level. This concerns the elaboration of European regulations at the national level, such as designating national authorities, establishing which authorities have access to European databases, and creating a basis for the national versions of the European databases.

### **Implications of Developments for the Wbvk**

We have determined that the Wbvk can continue to play a role in the collection of biometric data for identification and verification purposes in the future. Especially when it comes to purely national powers, such as issuing the *mvv* and the regular residence permit, Article 106a Vw 2000 remains the legal basis for the collection of fingerprints and facial images. For other parts of the chain, we see that at the EU level powers are being established to collect biometric data. In some cases, the Wbvk may still play a supplementary role. However, this can only be clarified once the EU legislator takes a clear stance on this and/or the European Court of Justice or the Administrative Jurisdiction Division of the Council of State render a judgment. Regarding the processing of biometric data, Article 107 Vw 2000 plays an important role. With the Implementation Act for EU Regulations on Borders and Security, Article 107 Vw 2000 has

been amended to allow the BVV to serve as the national database of a European information system such as the SIS.

## Sub-study II: Contribution of the Wbvk to the functioning of the Aliens Act 2000

To identify the contribution of the Wbvk to the Vw 2000, we first conducted qualitative research to understand the processes in the immigration chain. We did this using documents such as the Protocol for Identification and Labeling (the PIL, which describes the standardized procedure for registering, identifying, verifying, modifying, and deleting personal data within the immigration chain) and interviews with chain partners and the administrators of the BVV. In these interviews we also inquired about the perceived added value of using biometrics, and specifically the Wbvk. To assess the quality of fingerprints (and the processes to monitor and ensure that quality), measurement data were requested and interviews were conducted. We performed quantitative analyses to gain insight into the number of biometric data registrations and the use of biometrics for verification and identification. Finally, we reviewed reports prepared for the House of Representatives of the Dutch Parliament regarding irregularities regarding identity that were registered due to the Wbvk.

### Production, development and management

Regarding registrations, we found that the number of facial image registrations temporarily dropped significantly during the COVID-19 crisis but has since returned to previous levels. This involves around 750,000 registered facial images per year. The number of registered fingerprints per year has remained relatively stable since 2015, with a peak in 2022. Previous evaluations had already noted a significant increase in the number of registrations per year since 2014, as the Ministry of Foreign Affairs and the Dutch Immigration and Naturalisation Service (IND) started registering fingerprints in the BVV.

As for management, this evaluation revealed that the deletion of biometric data is not proceeding smoothly. When coordinating between parties on which registrations can be deleted, it sometimes takes a long time to get the necessary approval. This delay is mainly due to the fact that the departure of the foreign national has not been confirmed at that time. As a result, the data are not deleted within the legal time frame.

### Usage and utilization

All chain partners use the BVV in (part of) their processes. During each initial contact of a foreign national with a partner in the immigration chain, identity is registered based on documents and/or other information, and biometric data are stored. During that registration, it is also checked whether the person has been registered before. If necessary, European systems such as the VIS or SIS II are also used. During each subsequent contact of the foreign national with a chain partner, identity is then verified using biometrics.

The number of actions varies per year, depending on the size of the groups of migrants going through the different processes. For example, in 2023, over 62,000 biometric registrations were conducted, and over 104,000 biometric data additions were made to existing files.

In 2023, there were 174,000 searches conducted to establish identity using biometrics, and identity was verified 35,000 times using the BVV. The results of these searches and verifications vary among chain partners. This can be explained by the different processes in which the

chain partners perform a search or verification. We also observe that within the same chain partner, hit rates sometimes vary significantly over the years. This can be partly explained by the introduction of new systems. Additionally, the composition of the group of foreign nationals for whom a search or verification is conducted is not stable. This affects the expected outcomes of these actions and therefore the realized outcomes.

The registration analysis revealed that biometrical data of EU citizens, i.e. nationals of the member states, have been mistakenly stored in the BVV. Initially, it was unclear whether these individuals were from within or outside the EU, but clarity was later obtained. In the case of naturalization, data are not immediately deleted but are selected for deletion at a later time, after being reviewed by chain partners. Until the data is actually deleted, this is in violation of Article 106a (4) and Article 107 (1) Vw 2000; EU citizens fall outside the scope of the Wbvk and their biometrical data can therefore not be stored in the foreign nationals administration.

Apart from this, it has not been found that chain partners use biometric data in situations that fall outside the scope of Article 106a Vw 2000 or the relevant European regulations. The COA has stopped using biometrics for in-house registration because Article 106a Vw 2000 did not provide a legal basis. No new processes involving the use of biometric data have been established since the previous evaluation.

We also observe that the way chain partners use biometric data is not regulated by legislation. The PIL can be considered a description or at most a standardization of the procedure, but it does not regulate the procedure. The lack of regulation in this area is undesirable. First, the use of biometric data is a restriction of the right to privacy of foreign nationals, as protected by Article 8 ECHR and Article 10 of the Constitution. It is therefore important that the use of this data is carried out carefully, within legal boundaries, and that requirements are set for chain partners in this regard. Second, it is also important for the effective implementation of immigration policy that the use of biometric data is handled carefully. Careless procedures carry a higher risk of incorrect or incomplete data, which may hinder making correct decisions based on that data or require additional capacity to correct them.

### **Reliability and quality of data**

In the previous evaluation of the Wbvk, researchers recommended focusing on integrated quality management. This has been partially implemented. As in the previous evaluation, it was again observed that fingerprints in the BVV are assigned an NFIQ score (an international approved quality score for fingerprints). Additionally, a score is now also assigned by the system itself. The two scoring methods produce slightly different results: according to the NFIQ method, the quality is stable, while according to the system's method, the quality is declining (with variations between chain partners). The scores allow for monitoring the quality of fingerprints, but this evaluation does not show that such monitoring is actually being carried out, nor is there any central control over quality. However, within the Chainplatform Identity Immigration Chain (in which the chain partners are represented) issues with the quality of biometric data collected by diplomatic posts has been a topic of discussion.

In addition to quality scores, the success rate of each verification attempt is recorded. The success rate provides an indication of the reliability and quality of the data. The success rates of verification attempts by the IND, the police, Royal Netherlands Marechaussee (the government organization responsible for, among other things, border police tasks), and Custodial Institutions Agency (DJI) have been relatively high (around or above 95%) from 2020 to 2023

compared to previous years. A slight increase can also be seen here. At the Ministry of Foreign Affairs, the success rates are lower (just above 90%).

There is no indication that the quality of biometric data in practice is insufficient. If this were the case, it would need to be addressed within the Chainplatform Identity Immigration Chain.

### **Irregularities**

Since the previous evaluation, the Wbvk Irregularities Report has been established as a tool to periodically inform the House of Representatives about the number of identity-related irregularities detected based on the Wbvk in the immigration chain. This report has now been sent to the House of Representatives twice, with the most recent report containing data for the entire year of 2022. These reports distinguish between cases of possible identity fraud detected by the IND Enforcement Information Hub (HIK) and identity-related irregularities recorded in the logging of the BVV. No other registrations of (suspected) irregularities have been found, either centrally or from chain partners.

The reports that have been delivered to the House of Representatives so far are based on data from all relevant chain partners using uniform definitions. The categories of irregularities reported differ between the two channels through which information is collected. Moreover, the categorization is much broader than the classification used in the previous evaluation. Physical irregularities are not reported, and for functional irregularities, only a distinction is made between possible identity fraud and administrative irregularities.

The most recent report shows that the number of signals of possible identity fraud is limited but not negligible. In 2022, there were 290 cases. Additionally, a significant number of administrative irregularities came to light (379).

There are some issues with the informational value of the reports. For instance, there are two entities/channels from which data is provided: the IND's Enforcement Information Hub and the BVV administrators of the Directorate of Migration Chain Coordination (Directie Regie Migratieketen, DRM). Both entities also receive signals from various chain partners, but the reports do not make clear whether, and to what extent, there might be overlap of cases or what types of irregularities are included in the final report via which channel. Inquiries made during this evaluation revealed that there is no overlap.

The timing of the first two reports has been such that the figures from both editions cannot be easily compared. There is some overlap in the reporting periods. The reports cover the period after the Wbvk extension, and only two consecutive years in that period. As a result, no conclusions can be drawn about the development of the number of irregularities.

Outside the data provided from the BVV and the Wbvk Irregularities Reports, no data have been provided by chain partners regarding irregularities. It can thus be concluded that the recommendation to achieve uniform, chain-wide, and periodic reporting of irregularities has been partially met. The available information could be further explained and possibly broken down to provide a better picture of the situation regarding irregularities and to map developments in this area.

### **Chain Partners**

When asked about the usefulness and necessity of the Wbvk, chain partners indicate that they consider the use of biometrics the most reliable method of identity verification. Identification



based on documents and statements is not considered a viable alternative because this method of identification is less reliable and takes more time. Chain partners expect that the elimination of the possibility to use biometrics would result in delays in processes.

For chain partners, it is difficult to pinpoint the specific added value of the Wbvk compared to European regulations. This is because in daily practice, it is not always known on what legal basis the use of biometrics in certain processes is based. According to chain partners, this is because the exact legal basis is not relevant in practice: it is more important to know that biometrics can be collected and what the procedure for this is. There is an intertwining of processes based on different legal grounds. The interconnection between the BVV, European systems, and chain partners' systems makes it difficult to distinguish between the use of biometrics based on the Wbvk and European law in practice.

Chain partners also indicate that the dissolution of a central national storage of biometric data would complicate the use of data based on European regulations. Apart from the fact that the processes would have to be restructured, the data would then have to be temporarily stored decentrally by chain partners for consultation with European systems. The Wbvk, which under Article 107 Vw 2000 stipulates that there is a foreigner administration and that biometric data are stored there. The chain partners observe a contribution of the Wbvk to the execution of immigration policy in this respect.

### Substudy III: Concluding analysis

#### **Contribution to European Systems**

As far as the collection of fingerprints and facial images is concerned, the Wbvk does not contribute to European systems. Due to the chosen legal construction, the power to collect biometric data based on the Wbvk only exists if fingerprints and facial images cannot be collected based on a European regulation. The situation is slightly different with the VIS because the recording of biometric data in the VIS is based on a national power for collection. In other words, the collection relies on national authority, while the processing of information in the VIS is based on the VIS regulation.

Regarding Article 107 of the Vw 2000, which forms the basis for the BVV, the situation is somewhat different. As a result of the Implementation Act for EU Regulations on Borders and Security, Article 107 of the Vw 2000 has been amended so that this article can also form the basis for the national equivalent — provided it is allowed under EU regulations — of the European system.

#### **Contribution to the Implementation of the Vw 2000**

During this and previous evaluations, it has repeatedly emerged that the question of the Wbvk's contribution to the implementation of the Vw 2000 yields a dual response. On the one hand, we find that the chain partners in the immigration chain unanimously and unequivocally argue that the use of biometrics, in general, is of great added value and that the legal basis provided by the Wbvk to store and use biometrics outside of European regulations is an indispensable link. According to chain partners, nearly all processes could be carried out much less efficiently without biometrics. In many cases, there would have to be a fallback on the use of documentation and statements from foreign nationals, which would have an unspecified but significant impact on the required capacity of the chain partners. Even with additional resources, processes would be less effective according to chain partners: in many cases,

biometrics is the only definitive and feasible means to ensure that the registration of migrants' identities proceeds correctly.

The Wbvk is part of a system of regulations that collectively form the legal basis for the use of biometrics in the immigration chain. Processes are interwoven within and between chain partners and make use of biometric data processed on different legal grounds. It has been difficult for interlocutors to concretely outline the consequences of potentially discontinuing the Wbvk and to estimate its impact. We find that the use of biometrics, also based on the Wbvk, is so integral to the processes that this scenario is not seriously considered by chain partners and is hard to imagine.

At the same time, we see that quantitatively substantiating the value of the Wbvk remains challenging. The irregularities report that has now been compiled twice can still be further developed and improved. The information can currently be described as coarse-grained. Moreover, the process of creating the report is briefly described, making the figures difficult to interpret. A third improvement point would be to aim to complete the report more quickly, so that it is more current than has been the case so far.

Aside from this, a 'dark number' issue continues to apply: the number of irregularities and attempts at identity fraud prevented by the Wbvk cannot be determined or substantiated because this number is unknowable. Therefore, the consequences of the Wbvk' termination remain unclear. Finally, we reiterate that there is no data on the situation before the Wbvk came into force, so a comparison with that situation can never be made.

It could now be questioned whether further improving the quantitative picture of the Wbvk's contribution to the implementation of the Vw 2000 would significantly influence the question of whether the usefulness and necessity are sufficient for further extension of this act. It is clear that annually, in several hundred cases, possible identity fraud is detected concretely based on the Wbvk, but it cannot be determined how many cases of identity fraud are prevented. Further specification of which types of irregularities have been identified will not change this overall picture. In theory, it would still be possible to calculate a quantitative effect of the Wbvk's expiration on the efficiency of processes in the immigration chain—a rough estimate of the required additional capacity could be made—but even then, the question is whether this would change the perception of the Wbvk's contribution. The qualitative picture that has emerged from three evaluations is that the Wbvk contributes to the efficient execution of processes. This contribution does not exclusively stem from the increased ability to combat irregularities. A number of processes in the immigration chain can be carried out more efficiently thanks to biometrics, without irregularities playing a role.

From the perspective of due diligence and the protection of personal data, we note that the use of biometric data is not regulated but is only described (or harmonized) in the PIL. Given the restriction of the right to privacy of foreign nationals, it is important that the use of biometric data is handled carefully and that requirements are imposed on chain partners in this regard. One topic that requires special attention is the storage of data of EU citizens.

It is ultimately a political choice whether the collection of fingerprints and a facial image of a foreign national is important for the operation of the Vw 2000. Given the current Borders and Security program, the EU seems to have already made a choice. The amendment of European regulations in this context not only involves the introduction of information systems but also the collection of biometric data for identification and verification. Still, it is important to

critically examine why information is being collected and whether the collection of data is proportionate to the infringement on the privacy of foreign nationals. The collection of information for the sake of collecting or to anticipate situations that may arise in the future may encounter the issue of non-discrimination; particularly in this specific case, where only information from foreign nationals is being gathered.

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