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## SVAR PÅ UDVALGSSPØRGSMÅL

Indholdet af den hollandske grænsekontrol

Til underretning for Folketingets Europaudvalg vedlægges Skatteministeriets besvarelse af spørgsmål nr. 126 ad EEU alm. del af 9. juli 2012 vedrørende indholdet af den hollandske grænsekontrol.

Nicolai Wammen



Til

Europaudvalget

Hermed sendes svar på spørgsmål nr. 126 af 9. juli 2012 EEU (alm. del).

Spørgsmålet er stillet efter ønske af Peter Skaarup (DF).

Thor Möger Pedersen

/Ole Morsing

### **Spørgsmål nr. 126 (Alm. del) fra Folketingets Europaudvalg:**

”Ministeren bedes redegøre for indholdet af den hollandske grænsekontrol, der er indført ved begyndelsen af året 2012, herunder redegøre for, hvorvidt grænsekontrollen eller dele af denne kontrol, efter ministerens vurdering er foreneligt med EU-reglerne og reglerne i Schengen- samarbejdet, herunder for, om Kommissionen har haft bemærkninger til kontrollen”.

#### **Svar:**

For at kunne svare på det spørgsmål er følgende bidrag indhentet fra justitsministeren, som jeg kan henholde mig til:

”Som svar på første del af spørgsmålet kan det oplyses, at den nederlandske regering den 11. juli 2012 på sin hjemmeside offentliggjorde vedlagte faktaark om det nederlandske kameraovervågningssystem kaldet @migo-boras.

Til den sidste del af spørgsmålet skal jeg henvise til mine svar af henholdsvis 11. januar 2012 til Folketinget på spørgsmål nr. S 1525 og 10. maj 2012 til Folketinget på spørgsmål nr. 731 (Alm. del). Af disse svar fremgår, at det er Kommissionen, der påser, om medlemslandene overholder deres EU-retlige forpligtelser.

Det kan oplyses, at kommissæren for indre anliggender, Cecilia Malmström, under en åben debat i Europa-Parlamentet den 4. juli 2012 nævnte sagen om det nederlandske overvågningssystem og antydede, at Nederlandene ikke vurderes at handle i strid med EU-retten. Kommissæren oplyste dog samtidig, at denne vurdering fra Kommissionens side er sket med forbehold for udfaldet af præjudicielle spørgsmål ved EU-Domstolen om sagen.”

## **FACTSHEET on the use of the @MIGO-BORAS system**

This factsheet provides information about the aim of and methods used by the camera surveillance system developed by the Royal Military and Border Police (*Koninklijke Marechaussee*; KMAR) to support mobile supervision operations. The system is called @MIGO-BORAS – a Dutch/English acronym which stands for Mobile Information-Driven Action – Better Operational Results and Advanced Security.

### **Aim**

The system will provide technical support to mobile supervision operations conducted by the KMAR. It will make these operations more information-driven and allow them to be conducted more efficiently and effectively.

### **Legal framework**

The crossing of internal borders between EU member states is governed by the Schengen Borders Code.<sup>1</sup> Under article 20 of the Code, 'Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out.' Article 21 of the Code provides that 'The abolition of border control at internal borders shall not affect the exercise of police powers by the competent authorities of the Member States under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks.' This also applies explicitly in border areas.

In the Netherlands, police controls in the border areas are carried out by the KMAR. The KMAR is a military police organisation under the responsibility of the Minister of Defence. However, the predominantly civil police tasks for which it is responsible fall within the remit of the civil authorities. Under section 6 of the Police Act 1993 and section 47 of the Aliens Act 2000, the KMAR is responsible for supervising compliance with the statutory provisions relating to aliens in the Netherlands. The Minister for Immigration, Integration and Asylum Policy has authority over the KMAR in this respect. Within this framework the KMAR conducts operational supervision of aliens (i.e. the mobile supervision operations mentioned above) in the internal border area with Belgium and Germany that extends 20 km into the Netherlands from the border.<sup>2</sup>

Mobile supervision operations conducted by the KMAR are intended:

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<sup>1</sup> 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.

<sup>2</sup> Section 50 of the Aliens Act 2000 in conjunction with article 4.17a of the Aliens Decree

1. to combat illegal residence, organised or otherwise (human trafficking or people smuggling) at the earliest possible stage and to prevent and discourage other prospective migrants from travelling to the Netherlands illegally;
2. to help combat cross-border crime and migration-related crime.

The timing, duration and frequency of these controls fall within the framework of the law in accordance with the Schengen Borders Code and the case law of the Court of Justice of the European Union.<sup>34</sup>

The Schengen Borders Code contains no specific rules governing camera surveillance in 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.

The national legal framework for mobile supervision operations applies fully to the support provided by the @MIGO-BORAS surveillance system. The legal framework for the intensity and frequency of the controls is laid down in Dutch immigration legislation. Mobile supervision operations can be carried out in Dutch territory in areas up to 20 km from the border with Belgium and Germany. On a given road, they may be carried out for up to six hours per day and for a maximum of 90 hours per month.

Mobile supervision operations are conducted on the basis of section 50 of the Aliens Act 2000 and article 4.17a of the Aliens Decree 2000. The powers laid down in immigration legislation do not provide a specific basis for the use of camera surveillance or number plate recognition.

The @MIGO-BORAS system has three functions:

1. to collect anonymous data for analysis and the construction of traffic profiles;
2. to observe vehicles and select those to be stopped and examined on the basis of analysis;
3. to respond to quick alerts in situations where there has been a serious or large-scale breach of the legal order or public order or in the interests of emergency assistance (as in the case of an amber alert).

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<sup>3</sup> ECJ, judgment in *Melki* (C-188/10) and *Abdeli* (C-189/10).

<sup>4</sup> Section 50 of the Aliens Act 2000 in conjunction with article 4.17a of the Aliens Decree.

For immigration law purposes, anonymous data only will be used for the first two functions (analysis and surveillance). The data stored will not be traceable to individuals since the list of characteristics that forms the basis for data collection and vehicle surveillance and selection is limited. Any data traceable to individuals (such as number plates) will be encrypted before they are processed. In the case of the third application, quick alerts, the data in question *is* traceable to individual motorists, since in an emergency scenario, one or more specific number plates will be sought. This third application does therefore constitute an infringement (albeit limited) of the right to privacy as laid down in article 10 of the Dutch Constitution, article 8 of the European Convention on Human Rights and article 8 [articles 7 and 8??] of the EU Charter of Fundamental Rights. The statutory basis for the processing of personal data in the context of quick alerts can be found in section 2 of the Police Act. The Data Protection Authority (CBP) recognises this application in its guidelines on automatic number plate recognition systems. This infringement is proportionate given the purpose of quick alerts. Such operations serve a justifiable purpose, i.e. investigating and preventing serious criminal offences (in situations where the assistance of the emergency services is required or there has been a particularly serious or large-scale breach of the legal order or of public order). The number plate data collected for quick alert purposes is handled by a very small number of KMAR staff, limiting the infringement of privacy rights. Strict criteria have been laid down in respect of who may access the data and under what conditions. The data may be processed provided this is essential for investigative purposes or emergency services assistance.

### **Organisation and design**

@MIGO-BORAS is a modular system, which can be operated according to the different functions for which it is designed.<sup>5</sup>

The system consists of 15 fixed camera (or sensor) installations and six vehicle-mounted mobile sensors plus a central control application to which all data is sent and processed. The fixed sensors are positioned in the main through routes in the border area with Belgium and Germany and are used exclusively in Dutch territory.

The system can be used both for data collection and for surveillance. These specific functions are described in the section below on 'Use'.

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<sup>5</sup> The CBP's guidelines on automatic number plate recognition systems and the Brouwer-Korf Committee's recommendations were specifically considered throughout the design process.

During data collection (function 1), traffic patterns are observed in accordance with a data collection plan. Smart sensors classify every passing vehicle by category (e.g. heavy goods vehicle, standard car or SUV), colour, country/region of origin and time and location. Vehicle and traffic-pattern risk profiles are then developed on the basis of these data. No number plates or other data that can be traced to individual persons will be processed.

When function 2 (surveillance) is used, the system observes characteristics of passing vehicles during the limited periods in which it is operating as part of mobile supervision operations. The system then uses existing risk profiles to establish whether a passing vehicle is a likely candidate for a vehicle check. In doing so the system makes the selection of vehicles for examination quicker and more objective. It is therefore a useful addition to existing KMAR practice based on the professional experience of its staff. It helps optimise implementation of KMAR tasks and makes staff deployment more efficient. It also increases the likelihood of identifying suspect vehicles, which in turn will reduce the number of checks to which bona fide motorists are subjected. With assistance from @MIGO-BORAS the KMAR attempts wherever possible to conduct its controls in the right place, at the right time and on the right vehicles.

When function 3 (Quick Alert) is used in exceptional situations, one or more specific number plates is searched for in the system.

### **Use**

In accordance with recently-amended national legislation, mobile supervision operations are conducted as far as possible on the basis of intelligence held and/or empirical information on illegal residence. To a limited extent, mobile supervision operations are conducted with a view to gathering intelligence on illegal residence.<sup>6</sup> During the limited period in which mobile supervision operations can be conducted, the @MIGO-BORAS system will provide direct support by comparing characteristics of passing vehicles with existing risk profiles. In addition, the system will be used (on the basis of the data collection plan) to gather anonymous traffic-flow data which will help analysts when drawing up new risk profiles or improving existing ones.

The system's functionality is illustrated in the figure below.

Figure 1. [Invoegen in beeld:]

Profiling module (List)

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<sup>6</sup> Article 4.17a of the Aliens Decree 2000.

Improving operational planning and management

Vehicle

Signal

System

Camera installation

Follow up

Controller

The three functions are explained in more detail below:

#### *1. Anonymous data collection and analysis*

The data collected on each passing vehicle is made anonymous. This ensures that the vehicle (and its passing the location in question) can no longer be traced back to an individual. Once this data is anonymous, it is analysed and then used to draw up risk profiles. It is also used to help analysts recognise trends and developments in traffic patterns. The latter helps KMAR plan and manage its subsequent mobile supervision operations. The risk profiles will be used to support the system of aliens supervision. The legal basis for this process lies in the general power to supervise aliens in the Netherlands. The profiles resulting from the collection and analysis of anonymous data comply with applicable anti-discrimination legislation. The purpose of this function is to collect information that can be used for data analysis. No immediate follow-up takes place in the context of this function and thus no individual vehicle is subjected to a check directly as a result of it.

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

The KMAR observes vehicles and selects those to be stopped and examined using risk profiles drawn up on the basis of the analysis of the data obtained by @MIGO-BORAS (see function 1) and any other information at the KMAR's disposal. The deployment of @MIGO-BORAS is based on a surveillance plan which specifies what sensors are to be activated and when. The use of @MIGO-BORAS is thus compatible with the provisions of article 4.17a of the Aliens Decree 2000. If a particular vehicle matches a particular risk profile, the controller receives a signal (a 'hit'). The controller can then advise a mobile KMAR officer which vehicle should be subjected to a check. After making visual contact with the vehicle the officer will then either stop the vehicle in question or decide not to perform a check.

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 until the

legal framework surrounding the statutory basis for such use has been determined more fully. Under the general police powers as laid down in the Police Act,<sup>7</sup> 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 (such as an amber alert or terrorist threat) may be issued in the interests of emergency assistance or if there 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.

Inherent in the system's design are a number of options that fulfil the principle of 'privacy by design'. In addition, design choices were made to maximise the system's compatibility with the KMAR's operational processes while taking account of current legislation and anticipated developments in the law. Examples of the choices underpinning the system's design include:

- The distinction between data collection and surveillance:
  - When in **data collection** mode, @MIGO-BORAS registers every vehicle that passes its sensors. Before the data is saved it is made anonymous. This means that the number plate is converted to a code that cannot be traced to an individual person.
  - When in **surveillance** mode, the system compares the characteristics of a vehicle recorded by the sensors with those contained in a risk profile. Using the profiling model, passing vehicles can be observed and compared with a set of vehicle characteristics without the need to reveal number plates.
- Data collection and surveillance are always performed on the basis of plans for each activity. If no plan is active the central application will receive no data on passing vehicles.
  - The **data collection plan** contains the specifications of the sensors to be deployed (e.g. the location, time and duration of their use). It also contains the address to which the data obtained are to be delivered.
  - **The surveillance plan** contains the same type of sensor specifications as those included in the data collection plan. The surveillance plan specifies the risk profiles with which the characteristics of passing vehicles are to be compared. It too contains the address to which vehicle data are to be delivered if they correspond to those contained in the risk profile.
- The system distinguishes between several types of target-group definitions to identify relevant vehicles as specifically as possible. It is possible both to specify known number

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<sup>7</sup> Sections 2 and 6 of the Police Act 1993

plates and to specify risk profiles that contain characteristics relating to vehicles in a given target group.

### **Fictitious scenario**

A combination of empirical information, KMAR intelligence and general police data analysis has revealed that illegal migrants are being transported to Westland to work in commercial glasshouses there. Intelligence suggests that white minibuses, mostly from country X, region Y, are being used for this purpose. The illegal aliens are often smuggled into the Netherlands in the early hours of the morning. It then emerges from @MIGO-BORAS data collection that a noticeably high number of white passenger vans from country X, region Y has been observed moving in convoy between 01.00 and 02.00 on Tuesday mornings, usually a quiet time. This turns out to be a weekly pattern – at the same location and the same time – which is at odds with the usual traffic pattern on other days of the week.

The KMAR decides to plan a mobile supervision operation at this time and draws up a risk profile based on the characteristics of such vehicles. When a certain vehicle passes, the system produces a hit matching the profile vehicle. The controller alerts a mobile officer to the hit. The officer then follows the vehicle in question and provides visual confirmation of the passenger complement. The vehicle is then subjected to a check.

### **Protection of privacy**

When surveillance is carried out using risk profiles, officers may check a vehicle on the basis of a single hit. Should this lead to follow-up action provided for by law, the system will provide visual footage of the vehicle in question, plus the date, time and location of the check. The whole data set, including reference to the risk profile employed, is stored as part of the official report arising from the vehicle check. These data (which are traceable to the individual concerned) will thereafter be stored in the KMAR's operational processing system and not in the @MIGO-BORAS system. Under section 8 of the Police Data Act, these data may be stored for up to five years. Non-hits are not stored.

If a particular vehicle is being sought in the context of a quick alert, the cooperation and assistance involved in processing data traceable to the individual concerned takes place in the context of national security and public order. If a hit is identified in the context of a quick alert, the system will generate footage of the vehicle and the date, time and location. The whole data set relating to the hit will be transferred to the requesting party (i.e. the Public Prosecution Service or the police) and stored in accordance with national legislation under that party's responsibility. The KMAR does not store this data itself.

Since the system uses digital technology, it was registered with the Data Protection Authority (CBP) when it was developed in 2005. Throughout the development process designers took account of the CBP's guidelines on automatic number plate recognition. The CBP has indicated that in line with established procedure, it waits until systems are operational before assessing whether they meet, statutory requirements.

Everyone is legally entitled to ascertain whether KMAR has processed any of their personal data and, if so, which personal data it has processed.<sup>8</sup> KMAR will announce the presence of permanent cameras by placing signs at the side of the road. Information about the system and privacy issues is also publicly available online.

### **Cooperation with neighbouring countries**

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

### **Testing stage and implementation**

The system's technical development is almost complete. An extended testing stage was launched on 1 January 2012 and is expected to be complete by mid-2012. This stage will focus on data collection and surveillance using @MIGO-BORAS. It will not yet extend to actual vehicle checks based on hits from the system. This will make it possible to translate the effects of the system into operational implications. The system will then be rolled out in accordance with the framework described above.

During the latest consultations, it was agreed that the European Commission will be informed when the system goes into operation.

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<sup>8</sup> Sections 25 and 28 of the Police Data Act.