How the WUID performs in practice

Evaluation of the Extended Compulsory Identification Act (WUID)

Barneveld, 4 February 2009
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Commissioning body: Ministry of Justice, WODC  
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Introduction

The Extended Compulsory Identification Act (Wet op de uitgebreide identificatieplicht in Dutch, hereinafter WUID) came into force on 1 January 2005. The WUID is an extension of the requirement to identify oneself, as compared with the situation before 1 January 2005. It consists of amendments and additions to the Compulsory Identification Act (Wet op de identificatieplicht in Dutch, hereinafter WID), in force from 1 June 1994, and a number of associated acts.

The WID provided for a limited identification requirement: individuals had to be able to identify themselves in specific situations as part of the fight against football hooliganism, fare-dodging in public transport, fraud and staying in the Netherlands illegally.

With the introduction of the WUID, investigating officers and supervisors have been given the general power to demand proof of identity from individuals aged 14 or older as part of the performance of their duties. Individuals who do not immediately comply with this demand are guilty of a criminal offence as they are violating Section 447e of the Dutch Criminal Code; they may be punished with a fine in the second category (hereinafter referred to as a ‘PV under 447e Sr’). It would seem that the introduction of the WUID marks the introduction of a general requirement for identification - and the associated requirement to carry identification. However that is not the case; there is a restriction that the power can only be exercised if it is in reason necessary for the execution of the officer’s duties.

The principal objective of the extension of the identification requirement as incorporated in the WUID is to strengthen law enforcement and supervision in public spaces by providing support for investigating officers and supervisors in the performance of their duties.

When the draft legislation was being handled, the Dutch House of Representatives stated their wish for an evaluation of the act after three years. The aim of this study is to provide the House of Representatives with information about experiences in practice with the WUID.
Statement of the problem and research questions

The key problem to be addressed by this study is as follows:

To what extent does the compulsory obligation to provide identification as laid down in the Act help to boost law enforcement and supervision in public spaces by providing support for investigating officers and supervisors in the execution of their duties?

Research approach

The following research activities were carried out so as to be able to answer the research questions:

(a) Analysing quantitative data in the systems of the Central Fine Collection Agency (CJIB in Dutch) and the public prosecution department as well as data from the operational police process systems;

(b) Holding a large number of interviews with police officers, extraordinary investigating officers (Boas in Dutch) and staff at the Royal Netherlands Military Constabulary (Kmar in Dutch), the district public prosecutor's offices and the CJIB;

(c) Carrying out a survey with written questionnaires among operational staff in the district police forces and analysing codified working instructions;

(d) Analysing complaints and reports made to police forces, the National Ombudsman and the National Bureau against Discrimination, and holding interviews via the telephone with police complaint coordinators;

(e) Studying relevant jurisprudence and carrying out a survey of newspapers to look at reporting on the introduction and implementation of the Act.

The intention and implementation of the Act

The principal reasoning behind the extension of the identification requirement is that investigating officers and supervisors have to be able to know who they are dealing with as part of the reasonable execution of their duties. If individuals are held accountable for their behaviour, they should no longer be able to remain anonymous.

Finally, positive effects were also expected when carrying out relief work as it would be easier to carry out such work since those in need of aid would be more likely to have proof of identity with them than in the past.
Negative effects of the Act anticipated by critics

Critics of the WUID expected it to have the following negative effects. These were mentioned in the discussions when the draft Act was being dealt with. The anticipated side-effects of the Act included:

(a) An invasion of privacy due to the power to demand identification being exercised in situations where there is no direct need to do so. The fact that the definition of the concept 'reasonable execution of duties' is unclear is a contributing factor in the opinion of the critics;

(b) Unjust discrimination against individuals, for instance based on the colour of their skin, due to ambiguity in the definition and scope of the concept 'reasonable execution of duties'. According to critics, discrimination could occur as those responsible for applying the law are unclear about the concept;

(c) Application of the law as an end in itself rather than as a means to an end, partly due to the pressure of the performance agreements with the police concerning the number of fines to be handed out.

How to apply the Act in practice

In response to the WUID, the Board of Procurators General and the Public Prosecution Service drew up some guidelines. The guidelines aimed to make the policy clear to the various police forces, the Boas, the supervisors and the district public prosecutor’s offices regarding how and in what situations the WUID should be applied.

More than three months after the Act came into effect The Board of Procurators General felt it necessary to send an additional letter with instructions to the district offices and the police forces. The letter dealt with the difficulties experienced in practice with determining individuals’ identity out on the street. The following issues were discussed in the letter: the overlap with other Articles, apprehending individuals and options for determining their identity on the spot and storing data.

Answering the research questions

This summary gives a brief answer to each of the research questions.

1. Application of the extended powers (situations and frequency)

Research question number 1: Is it possible to get a picture of the number of cases and the kinds of situations in which use is made of the extended powers?
A distinction is made between the power to demand identification, the application of means of coercion and drawing up PVs under 447e Sr.

**Exercising the power to demand identification**

The power to demand identification is frequently exercised in connection with minor infringements. These are criminal acts that occur on a regular basis both from the point of view of enforcing the criminal code and of maintaining public order. In exceptional cases, the power to demand identification is exercised in emergency/relief situations. The most common specific situations are when checking on youths loitering and causing a nuisance and/or loitering in places where such disturbances are common, checking on vagrants and beggars, often suffering from drug or alcohol addiction, who have broken the law, checking on individuals guilty of being drunk and disorderly in public and causing a disturbance around night spots, and checking on people guilty of fare-dodging or underpaying on public transport or traffic offences.

There are a few differences when compared with the description of how the power to demand identification should be applied in the guidelines of the Board of Procurators General:

(a) The guidelines do not explicitly mention the application of the power to demand identification in the case of infringements of the law, although this is very common in practice. Exercising the power to demand identification is considered self-evident in such situations, partly because it was already common practice before the WUID to ask for proof of identity in infringement situations (based on the philosophy “it can’t hurt to ask”);

(b) The guidelines state that application of the power to demand identification is not necessarily appropriate for individuals whose identity is already officially known. However the study showed that proof of identity is still regularly demanded in such instances. In addition, it should be said that the definition of ‘officially known’ may not be straightforward in practice;

(c) Finally, the impression arising from the interviews is that - in the initial period following the introduction of the WUID in particular (the first few months of 2005) - the powers were applied more widely than intended by a number of investigative authorities. Several respondents (operational managers) said in their interviews that a large number of investigating officers were under the impression that the introduction of the WUID meant a general identification requirement. After a few months, the fact that it should be necessary as part of the reasonable execution of duties was brought to their attention again; only then did it become clear to these investigating officers that there should be a good reason and that this reason should be recorded properly.

As there is no system recording all instances of the application of the power to demand identification, it is not possible to give a complete picture of the number of times the power to demand identification has been used.
Operational staff in the police forces said in a written survey that they exercised the power to demand identification on average 20 times a month. 80% of them said they did not hold back on applying the power to demand identification.

**Using means of coercion**

Coercion (primarily detaining and taking the person concerned to the police station) was often applied in the initial period following the introduction of the WUID, partly because of a common interpretation that coercion had to be used in situations where an individual was unable to give proof of identity. The letter with additional explanatory notes to the guidelines sent by the Board of Procurators General in April 2005 led to the application of coercion being curtailed. This letter stated that in deciding whether or not to detain someone, the proportionality with respect to the offence committed and the suspect’s cooperation should play an important role. The letter explained that in addition to the official documents serving as proof of identity, in future other means of identification would be accepted if the suspect was not able to meet the official identification requirements. As a result of this, the investigating officers became more restrained - as time went on - in their application of means of coercion.

**Drawing up PVs under 447e Sr**

Many of the PVs under 447e Sr were drawn up in combination with other offences. 40% of these official reports can be linked with so-called TRIAS offences (simple offences where the Public Prosecution Service does not need to get involved) or Mulder offences (minor traffic offences). In 19% of the cases it seems likely that another official report was drawn up at the same time (covering such areas as infringements on public transport and criminal offences). The mini-report descriptions in about 27% of the official reports show that an offence gave rise to the PV under 447e Sr. There does not seem to have been an offence in about 5% of the PVs under 447e Sr and in 9% of the PVs under 447e Sr it is not possible to deduce the reason for the report being drawn up from the records.

The analysis of the PVs under 447e Sr show that the WUID was applied in combination with minor offences (38% of the cases), traffic offences (23%), offences on public transport (11%) and criminal offences (5%). At least 5% of the PVs under 447e Sr probably were not related to an offence. The other PVs under 447e Sr were drawn up for other kinds of offences (3%) or for offences the nature of which cannot be deduced from the records (16%).

The study shows that PVs under 447e Sr were drawn up in situations where that was not always the appropriate thing to do according to the guidelines of the Board of Procurators General. In the first instance, there were the punishments in cases where individuals were officially known to the police. One reason for this is the confusion surrounding the criterion ‘officially known’.

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**Summary**
Secondly there were the cases where the PV under 447e Sr was not dropped after the individual subsequently brought along proof of identity to the police station. Investigating officers had considerable difficulty with the rule stating the PV under 447e Sr should be dropped in such circumstances. Putting this rule on paper was felt to deprive the individual investigating officer of his freedom to take his own decisions. The investigating officers also found it difficult to reconcile the rule with their own sense of justice. According to investigating officers, this would lead to a situation where cooperative suspects whose identity could be established at the scene would be given a PV under 447e Sr whereas individuals who are 'a nuisance' and have to be detained would eventually be sent off without a fine.

Application of the WUID by extraordinary investigating officers (who are not police officers)

The application of the WUID by extraordinary investigating officers who do not do police work shows some similarities with the application by investigating officers in the police force. The power to demand identification is exercised frequently. In general the use of means of coercion is left to the police. The extraordinary investigating officers who do not do police work are more reluctant to draw up PVs under 447e Sr.

The application by investigating officers working for the Royal Netherlands Military Constabulary (Kmar) does not seem to differ from the application by police officers, as far as can be ascertained from the two districts surveyed.

2. The number of PVs under 447e Sr and the process

Research question number 2: How many official reports (PVs in Dutch) were drawn up for infringement of Article 447e Sr? What was the process surrounding these reports?

The number of PVs under 447e Sr fell from more than 70,000 PVs in 2005 to less than 30,000 PVs in 2007 and over 21,000 PV's in 2008. There was strict enforcement in the initial period but subsequently the option of handing out punishment for infringement of Article 447e Sr was chosen less frequently. About 9% of the official reports were drawn up for teenagers aged 14 or 15 and about 12% were for 16 or 17-year-olds. The vast majority of the PVs under 447e Sr (96%) were supplied by the police forces.

The fine was paid (before or after transfer to the Public Prosecution Service) or the subject sentenced after being summonsed in 68% of the PVs under 447e Sr drawn up between 1 January 2005 and 31 December 2007. That percentage is lower if the official reports where the fine was paid following notification by the CJIB are excluded: 44% of the cases sent on to the Public Prosecution Service resulted in payment of the fine or sentencing.
The study showed up various differences between the districts. These differences were investigated further by taking five cases (the National Police Services Agency (KLPD in Dutch), Amsterdam, Rotterdam, Arnhem and Utrecht). The conclusions based on these cases can be summarised as follows.

The quality of the recorded information

The quality of the recorded information on the PVs under 447e Sr was not such that sufficient proof could be obtained at the hearing, particularly in the first year. This led to many of these cases being written off or dismissed, or to acquittal at the hearing.

Various reasons for this can be identified:
(a) The enforcement policy was not always agreed in advance between the district public prosecutor’s office and the police force and other executive bodies. The fact that the guidelines only became available at a late stage may have played a part in this;
(b) The working instructions certainly did not always emphasis the importance of accurate and complete records of facts and circumstances. The apparent paradox of the requirements to be met by the recorded information together with the use of a mini-report played a role here.

Requirements when determining identity

While it is plausible that judges and district public prosecutor’s offices started to apply stricter requirements to the way in which the identity of suspects was determined as shown on the official reports of offences, it is not possible to say to what extent that was the case on the basis of this survey.

The police forces were largely unaware of the tightening up of requirements following the introduction of the WUID. Communication on this matter did not always take place between the subdistrict courts, the district public prosecutor’s offices and the police forces. This was in all probability responsible for to the fact that the number of reports of offences or conduct with an offence code that were written off or dismissed was higher in 2005. At the same time, police officers were encountering the problem that detaining a suspect who was unable to show proof of identity on demand was not always possible or desirable for reasons of proportionality or practical reasons, such as the situation where the police station is not close by. These practical experiences combined with the increase in the number of cases written off or dismissed because of the way in which the identity was determined and recorded led to various different lists of documents and instruments to help the police and public prosecution service to come to an acceptable way of determining identity, for example for the correct registration of an official report for another offence.
Reactions to the cases being written off and dismissed

The examples of Rotterdam, Utrecht, Amsterdam and the KLPD show that the judgements of subdistrict courts and the policy applied by district public prosecutor’s offices affected the way in which the WUID was applied by investigating officers on the street, whether or not via the central processing units or the quality offices of the investigating authorities.

The district public prosecutor’s offices and police forces reacted in different ways to the many cases written off and/or dismissed and the many official reports of infringements and bad conduct sent back to the bodies supplying them. The example districts show that sometimes the decision was made to provide reporting officers on the street with more support in the form of standard texts and forms, sometimes to extend the range of documents permitted as an aid to identification and sometimes to set a strict acceptance policy for official reports (this was particularly so in Amsterdam).

3. Reasonable execution of duties

Research question number 3: Is the criterion ‘reasonable execution of duties’ sufficiently clear where the application of the power to demand identity is concerned?

Application of the WUID and reasonable execution of duties

Immediately following the introduction of the WUID, a number of investigative authorities applied their powers more widely than had been the intention. After a few months, the fact that the exercise of this power should be necessary as part of the reasonable execution of duties was brought to their attention again; only then did it become clear to most of the investigating officers that there should be a good reason and that the facts and circumstances should be recorded properly.

The study showed that investigating officers know when they can and cannot make use of the power to demand proof of identity. Some of the investigating officers said they felt they needed better information explaining when it really was and was not possible to demand identification. A minority of them said the WUID was sometimes (or often) applied without good reason.

Furthermore, the following remarks can be made with regard to the application of the power to demand identification in the context of a reasonable execution of duties:
(a) The study showed that proof of identity is still regularly demanded in cases where the subject’s identity is already officially known;
(b) There are examples to be found in case law where the judge determined that there was no question of reasonable execution of duties. However, such cases are few in number.
In most cases the court did not find in favour of the party making the complaint. Case law shows that the criterion of a reasonable execution of duties should not be interpreted too narrowly. The criterion is generally considered to have been satisfied if there is a clear link between nuisance and/or offences on the one hand and the exercise of the power to demand identification on the other hand, even if the identity check does not take place at the same time or place;

(c) Few complaints have been submitted regarding the application of the power to demand identification. What is more, the complaints that were submitted were generally dealt with through mediation (for instance, by providing an explanation). Only a few of the complaints that were subsequently processed were upheld;

(d) The study did not give any indication of the power being applied incorrectly in a discriminatory fashion. That topic barely features in the complaints submitted to the police forces, the National Ombudsman and the National Bureau against Discrimination. Investigating officers are regularly accused of discrimination but they see no link with the WUID.

PVs under 447e Sr for specific individuals or groups

The study shows that around 65% of the total number of PVs under 447e Sr drawn up through to 2007 were written for situations in which an offence had been committed. Nearly 60% of the official reports concerned ‘double fines’, where an official report was drawn up both for the offence that was the reason for the demand for identification and for not being able to show proof of identity.

The conclusion regarding the ‘double fines’ cannot easily be termed ‘positive’ or ‘negative’. A positive aspect is that the reason for demanding identification is clear, which means that questions about the reasonable execution of duties are not relevant here. A negative aspect is that a policy of strict enforcement and punishment does provoke resistance. Applying the powers in a way that takes better account of the specific situation, as has generally been the case after the initial period, goes down well with suspects. The application of the power to demand identification is generally accepted.

A negative effect from handing out ‘double fines’ is that members of a relatively weak group in the community (vagrants, drug addicts and the homeless) are often fined for not being able to show proof of identity. Here there are no doubts about the legitimacy of applying the power to demand identification as the PVs under 447e Sr are connected to an offence and it can be considered necessary to apply the power to demand identification in all reasonableness provided the individual was not already officially known. However the appropriateness of fining this group to this extent under the WUID is open to question.
The possibility cannot be excluded that individual performance norms had some influence on some of the investigating officers and their decisions on whether or not to punish infringements of Article 447e Sr. However, this effect is not specific to the WUID. It was indeed the case that PVs under 447e Sr were initially seen as 'easy' official reports to draw up, but there has been quite a shift in opinion since then.

Being able to verify the application of the criterion of ‘reasonable execution of duties’

The study shows that it is difficult to verify whether the criterion of ‘reasonable execution of duties’ has been applied. Firstly this is due to a pragmatic approach to recording the facts and circumstances leading to the demand for identification. Investigating officers were negligent in this area, particularly to begin with. Many reporting officers did not understand the importance of being able to verify the necessity of the demand for identification and the legal implications of there not being any necessity. A number of court judgements clearly show that the judge was unable to decide whether the demand for identification was necessary based on the motivation given in the PV under 447e Sr, or was unable to decide on what authority the demand was based.

A second reason is that most of the police forces did not comply with the request made by the Dutch Ministry of the Interior and Kingdom Relations to set up the complaints records system in such a way as to allow questions about the number and nature of complaints to be answered. What is more, many of the complaints submitted following application of the WUID were dealt with through mediation and did not have to be assessed by a complaints committee.

Thirdly, when the police’s operational process systems were consulted, it turned out that there are hardly any instances of the application of demands for identification that do not lead to prosecution being recorded (this is not obligatory). The impression is given that situations in which the power to demand identification is exercised but no PV 477e Sr is drawn up are scarcely recorded in the police incident books. The identity of suspects is noted as part of the process of getting a picture of groups who regularly cause a nuisance. However this can not easily be deduced from the operational process systems.

4. Experience in practice with the age limit of 14

Research question number 4: What are the experiences in practice with the age limit of 14

When the Act was being drawn up, the age limit of 14 was a compromise between a limit of 12 and a limit of 16. In practice both those using the WUID and ordinary citizens are well aware of the age limit. A small majority of the investigating officers would prefer to have the age limit set at 12 years old. It would give the investigating officers more options in their work.
They also consider this age limit more logical, given the move to secondary school and the age at which children become punishable for offences. A minority of the officers do not agree with this. Some of them do not oppose it in principle but they see disadvantages in the risk of theft or loss from the point of view of citizens and parents; they therefore prefer to keep the current age limit. 14 and 15-year-olds are more likely to have proof of identity on them than others and seem to be more accepting of the identification requirement than people older than 16. When 14 or 15-year-olds are fined for not being able to show proof of identity, the proportion paying the fine is greater (30 percentage points more) than is the case for people older than 16.

5. Establishing identity on the street

Research question number 5: Is there sufficient time for determining the suspect’s identity on the street in practice (availability of computer systems such as the municipal registry (GBA) and the driving licence registry)?

The study shows that it is not always possible to determine the individual’s identity on the street. At first this led to numerous cases where the suspect was detained and taken to the police station. Later investigating officers began to accept other means of identification as well. An example is a pass with a photo in combination with a check in one of the registries. Where these registries are concerned, it was said that their not being available was a hindrance when determining identity on the street. This study did not reveal any concrete evidence that these systems were unavailable with any regularity.

The introduction of the WUID has had the positive effect that suspects are able to show proof of identity more often. This facilitates and simplifies the determination of identity on the street. This still leaves a group where determining identity remains problematic, even after the suspect has been detained. This group consists mainly of demonstrators, squatters and foreign nationals. The WUID has not provided an answer for this group.

6. Experiences regarding the verification of proof of identity

Research question number 6: What experiences do the investigating officers and the supervisors have with the verification of the proof of identity shown?

There are regional differences in the policy regarding the acceptance of other documents if proof of identity cannot be shown. The line described below is the one most commonly followed:
(a) If the subject does not have qualifying proof of identity on him/her, the identity may be determined using another document, which should at least contain a photo of the suspect or individual in question;
(b) In exceptional cases identity may be determined using other documents or aids, if supported by extensive arguments;

(c) If identity has been established in this way, no further means of coercion should be applied.

This study shows the WUID has had both a positive and a negative effect on the workload for investigating officers. The respondents feel the workload has become lighter as determining the identity of citizens is easier because they are more likely to have proof of identity on them and are less likely to give a false name. The WUID has also made the workload heavier because of the associated stricter requirements for establishing identity in official reports of infringement and bad conduct in general. In addition, detention on the basis of the WUID costs the reporting officer, the assistant public prosecutors and the staff at the front desk of the investigating authorities a relatively large amount of time.

7. Complaints

Research question number 7: Were any complaints submitted to the competent authorities or the National Ombudsman regarding the application of the powers granted by this Act to investigating officers and supervisors, or were there any legal proceedings? What are the nature and the content of these complaints and proceedings and how many complaints are involved?

The following picture arises of the number of complaints relating to the WUID based on estimates made by complaints coordinators in the police forces. The smaller police forces estimate the number of WUID-related complaints to be about two or three a year, while the larger forces put the estimate at five to ten complaints a year.

The content of the complaint and the circumstances referred to in the complaint are very varied. Complaints often concern the manner in which proof of identity is demanded or the frequency of demands for identification. The demand often arises in a situation involving a ticket being given. Many of the complaints submitted were dealt with through mediation; it was not established whether or not they were valid.

Only a few complaints were made to the National Ombudsman. The National Ombudsman refers any complaints received in the first instance back to the police force in question or the competent authority. However going to court is not possible if a PV 477e Sr has not been drawn up and if the person in question has a complaint about the reasonableness of the demand for identity and/or how he/she was treated by the investigating officer or supervisor.
In 2005, the National Bureau against Discrimination, subsidised by municipalities to handle and record citizens’ complaints about discrimination, called on citizens to submit any complaints about the WUID to its website. The sixteen regional and provincial offices received a small number of reports.

Finally a study by Buro Jansen en Janssen showed that homeless people and drug addicts tended to be punished relatively more often for not being able to show proof of identity.

8. Support for investigating officers in the execution of their duties

Research question number 8: Does the Act help give support to investigating officers and supervisors in the execution of their duties and does it help bolster enforcement?

On the basis of this study, we can conclude that the opinion of the investigating officers is that the WUID provides added value in the execution of their duties. There is considered to be less added value for when carrying out emergency/relief work.

The WUID helps enforcement of criminal law, as in such situations it is more often possible to establish the correct identity and it is easier. This is partly because suspects are more likely to have qualifying proof of identity on them and partly because suspects on the street are more likely to cooperate in determining their identity. Official reports of infringements and bad conduct drawn up as a result of the offence are more likely to reach the right person as the correct identity is determined in more cases and a false name given in fewer cases.

The WUID helps maintain public order as individuals are less likely to be able to remain anonymous in instances where disorder threatens to erupt. It turns out that the WUID is actually used to get a picture of groups of youths or others who regularly cause disturbances, particularly by police forces in the major cities. This is a form of prevention of disturbances in public spaces. In the event of actual violation of public order, the identity of suspects can be established more often and more easily as suspects are more likely to be carrying qualifying proof of identity and partly because suspects on the street are more likely to cooperate in determining their identity.

A number of respondents also mentioned the WUID’s added value for correctly recording personal data in public sector computer systems, provided there is sufficient enforcement in this area. If personal details are always noted down using documents that qualify as proof of identity, there is less chance of the computer systems becoming contaminated.

The WUID also has added value for extraordinary investigating officers working for urban supervisory services and transport companies in the execution of their duties.
This is partly because suspects are more likely to have qualifying proof of identity on them and partly because suspects on the street are more likely to cooperate in determining their identity.

It is important to consider the fact that the enforcement policy affects the extent to which added value is realised. Furthermore, the number of requirements made on the way in which identity is determined and recorded may influence booking by operational staff.

9. Aggressive behaviour due to the WUID

Research question number 9: Are investigating officers and supervisors facing aggressive behaviour when applying the WUID?

There are no indications that the WUID has led to an increase in aggressive behaviour towards investigating officers and supervisors. There has been an increase in the number of incidents of aggressive behaviour, but the respondents in the survey do not link this to the introduction of the WUID.