Mobility, control and technology in border areas : discretion and decision-making in the information age

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8. Technology-Driven Crimmigration: Function Creep and Mission Creep in Dutch Migration Control[85]

In the previous chapters the issue of the MSM as an instrument for crime control has been discussed on several occasions. Both on a political and street-level calls for expanding the goals of the MSM have been observed, yet legislation has not yet changed in that direction. However, after the initial fieldwork, focus groups and interviews a new initiative to expand the application of Amigo-boras indicated that these calls did not fall on deaf ears. In this chapter we will take an in-depth look at the development of the application of Amigo-boras as a tool for crime control and why steps in this direction were taken.

8.1 Introduction

The field of migration control has seen an upsurge of technology in recent years (Broeders, 2007, 2011; Besters & Brom, 2010; Dijstelbloem, Meijer & Brom, 2011; Adey, 2012). Surveillance technology has become an important part of controlling who can and cannot cross the border in order to make migration control more efficient and effective. In Europe, for example, systems like the Schengen Information System, the Visa Information System and EURODAC have become important tools in combatting irregular migration and cross-border crime and travelers are surveilled by digital databases such as API and PNR (Broeders, 2007; Aas, 2011; Brouwer, 2011; Adey, 2012). Alongside the implementation of new surveillance technologies, there is a development towards interconnecting existing technologies and databases (Broeders, 2007; Wood & Webster, 2012; Wilson, 2014), in an attempt to reap the most benefits of the technology and to further enhance efficiency and effectiveness. As a result technology can get 'greedy' - information equals power after all - and tries to absorb as much information as possible (Dijstelbloem, Meijer and Brom, 2011).

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A potential result of the interconnection of technologies is a phenomenon called 'function creep': *the expansion of a process or system, where data collected for on specific purpose is subsequently used for another unintended or unauthorized purpose (*Mordini and Massari, 2008, pp. 490). By adding new databases or functionalities to existing technologies, they may over time be used for purposes that were not originally intended. Although the use of technology for different purposes is not inherently good or bad, it may come with unintended consequences. While the literature on function creep mostly focuses on the privacy implications in this regard (see for example: Perrig, Stankovic & Wagner, 2004; Greenleaf, 2007; Pavone & Esposti, 2012), side effects can come in many other forms. An example of this can be found in the concept of *crimmigration*: the merger of immigration control and crime control (Stumpf, 2006, 2011; Aas, 2011; Van der Woude, Van der Leun and Nijland, 2014). As immigrants are increasingly associated with crime, both crime control and migration control take on characteristics and methods of the other. One aspect of this is the use of information technology developed for migration control purposes being used for crime control purposes or vice versa. For example, the EURODAC system that started as a finger print database to identify asylum seekers and irregular immigrants is now also used in the war on terrorism (Besters & Brom, 2010; Tzanou, 2010). The underlying assumption would be that potential terrorist are among asylum seekers, creating a need to match migration data with criminal justice data. The broadening of the scope of these technologies can thus further contribute to seeing immigrants as 'suspicious' by institutionalizing the process of othering. No longer is this something that is being done by individual officers working on the streets, but now it's also ingrained in the systems that are created to 'help' these individual officers to reach more objective decisions (Lyon, 2003, 2007; Magnet & Rodgers, 2012).

By employing a case study of the Amigo-boras smart camera system used by the Royal Netherlands Marechaussee (RNLM), this chapter aims to shed light on the assumptions, expectations and rationales that have contributed to a broadening of the scope of usage for this system. In doing so, we will critically analyze the extent to which these assumptions, expectations and rationales are reflections of 'crimmigrant' stereotypes of either street-level officers and/or policy-level officials, or both. As Kleijer-Kool (2015) points out, changes in policing policies can be initiated from a top-down policy level or a bottom-up street-level. Applying these two perspectives to the Amigo-boras case study will give a better understanding of the development of function creep and crimmigration as well as the relation between the two concepts. Amigo-boras is part of a larger development of intelligence-led policing in Dutch migration control. The RNLM, responsible for migration control in the Netherlands, implemented Amigo-boras in August 2012 and uses the system during migration checks called the Mobile Security Monitor (MSM). MSM checks are aimed at combatting irregular migration, human smuggling and identity fraud and can be carried out on highways in a twenty kilometer zone from the borders with Belgium and Germany (see also: Van der Woude, Brouwer & Dekkers, 2016; Van der Woude, Dekkers & Brouwer, 2016). Amigo-boras was originally implemented to, among other things, select vehicles out of the cross-border traffic which could possibly be in violation of Dutch immigration laws by using automatic risk profiling. However, since January 28th 2016 the application of the system has been expanded and the RNLM is now able to use the system for crime control purposes as well.

After first elaborating on the literature on function creep and crimmigration, the chapter will turn to the unique empirical research underlying it. By drawing from interviews, focus groups, informal conversations during ride longs and policy analysis, we will research street-level and policy-level perspectives on the use of information technology for 'crimmigration' purposes. As most of the current literature on crimmigration is focused on the legislative level and the street level and less is known on the policy level that is in between, this chapter not only aims to provide new insights on the role of technology in the crimmigration, but also the how policy-level actors fit into this process. We will end with a reflection on why it makes sense for crimmigration and technological function creep to go hand in hand in an age of increased global mobility and why scholars should continue to be critical on these developments.

8.2 Crimmigration and function creep

In her 2006 publication Juliet Stumpf observed that migration control was increasingly converging with crime control. To describe this development she introduced the portmanteau *crimmigration*. Since the original publication the subject has received much attention from academics as Stumpf was not the only one who was observing this development. Many scholars have studied the overlap of migration control and crime control in different countries and coming from different academic disciplines (Chacon, 2010; Sklansky, 2012; Van der Woude, Van der Leun & Nijland, 2014; Van der Woude, Dekkers & Brouwer, 2016). One of the main takeaways from the research is that an increased association between migration and crime has resulted in migration control taking on similarities of crime control (Stumpf, 2006; Bosworth & Guild, 2008; Provine & Doty, 2011; Barker, 2012; Van der Woude, Van der Leun & Nijland 2014; Nethery & Silverman, 2015; Dekkers, Van der Woude & Van der Leun, 2016). Sklansky (2012) has stated that the overlap over the two previously distinct fields of law enforcement has led to what he calls ad-hoc instrumentalism: '*in any given situation, faced with any given problem, officials are encouraged to use whichever tools are most*

effective against the person or persons causing the problem' (Sklansky, 2012, pp. 161). In addition to this, viewing immigrants as potential security threats carries the risk of law enforcement officers disproportionately targeting individuals of certain ethnicities, nationalities or skin color, in other words ethnic or racial profiling (Van der Woude, Van der Leun & Nijland, 2014).

The concept of crimmigration is also reflected in the securitization of the border (Gammeltoft-Hansen, 2006; Neal, 2009; Kaufmann, 2013). Nations taking measures to keep the unwanted, high-risk immigrants out while letting the wanted, low-risk immigrants pass. The process of determining who is high-risk and who is low-risk relies heavily on the use of information technology, leading to an increased use of border surveillance technologies (Broeders, 2007; Wood & Webster, 2012; Wilson, 2014). While ad-hoc instrumentalism and ethnic profiling are usually associated with decisions of individual law enforcements officers, these concepts are also observed in these border technologies. Lyon (2003, 2007) has expressed concerns regarding a variation of ethnic profiling called 'social sorting.' Border technologies can be used to target groups within society, such as specific nationalities or ethnicities, possibly resulting in technology assisted forms of ethnic profiling. Due to the conflation of migration control and crime control, the technologies used to identify high-risk immigrants are not all primarily aimed at migration control (Dijstelbloem, Meijer and Brom, 2011). In order to find out who are the high-risk immigrants, criminal justice data and technology are mixed into migration control. Similar to Sklansky's (2012) idea of ad-hoc instrumentalism, any information available is used to keep unwanted immigrants out. This, of course, includes information that was not originally intended for migration control purposes. Crimmigration can therefore lead to the misuse of information technology for migration control purposes.

The concept of function creep can play an important part in this process. According to Mordini and Massari (2008) three elements are necessary for function creep to happen. First, a policy vacuum is needed, indicating an absence of clear policies on how to use the technology. This absence can result in the system '*being driven only by different interests of various stakeholders*' (Mordini & Massari, 2008, pp. 490). Second, there has to be an unsatisfied demand for a given function. Policies are aimed to address societal issues that are seen to need a governmental response and technology may be able to play a role in addressing the issue. Research has shown that policy-makers place a large amount of faith in technology and its ability to solve complex issues (Nye, 2004; Besters & Brom, 2010; Kearon, 2012). However, instead of developing a new technology, modifying an existing technology and adding new functionalities can be just as effective. A third element is what is Mordini and Massari call a 'slippery slope effect.' Substantial changes in the application of the technology do not happen in an instance. It starts with a small addition or change, setting a precedent to add more functions to a technology, which changes how a technology is applied over time. Dahl and Sætnan (2009) add two additional criteria needed for function creep to appear. The first is straightforward: the technology in question needs to be able to do more than it is currently used for. This is often the case, as technology may be designed for a specific goal, it is often versatile and new possibilities can be tapped into with a few minor alterations or updates. In addition, there needs to be a change in the political arena to trigger the need to use the technology for different purposes. Function creep needs a reason to exist and changes in society and the following political reactions can be such a reason.

This is where the link with crimmigration could be made. The political arena on migration has changed significantly now immigrants are increasingly being perceived as potential security risks. This has created a demand for more secure borders (Gammeltoft-Hansen, 2006; Neal, 2009; Kaufmann, 2013). Due to the confidence in technology, but also the limited possibilities for physical border security due to regulations such as the Schengen Agreement, the solution to the problems surrounding migration are found in technology (Besters & Brom, 2010). However, because managing migration is a complex problem, newly introduced technologies may not live up to the expectations. As the faith in technology to solve the migration issues remains, new ways of boosting performance of the technology are sought. One of the possible solutions is tapping into previously unused functions or information stored in other databases, possibly not related to migration, which may cause the 'slippery slope effect.' If the new capabilities give positive results, connecting the system to more data may give even better results and if the system still does not perform up to expectation it could still be in need for more data. This process could create a spiral of crimmigration and function creep with an end-game of a full merger of migration control technologies and criminal justice technologies and no distinction in what the technologies are used for.

While this scenario illustrates that function creep and crimmigration may very well go hand in hand, it is a hypothetical scenario based on theoretical assumptions. Empirical data, such as the Amigo-boras case study, will have to show if this scenario has any foothold in reality by investigating the assumptions, expectations and rationales behind the process of function creep in migration control. Analyzing the Amigo-boras case study can be used to gain further insight in how function creep and its characteristics operate in an empirical setting and how function creep and crimmigration are connected.

8.3 Methods

This chapter will use three different qualitative methods to gather the necessary data. The first method is interviewing, which, as Evers (2013) states, is a suitable method for getting insight in the perspectives and rationales of respondents. Two rounds of interviews were held. The first round of interviews was held between August and November 2015, with a total of 18 interviews. The respondents had different positions ranging from staff level employees of the RNLM, policy-makers of the RNLM, administrators working at the Ministry of Security and Justice and the Ministry of Defense. A topic list was used for these interview containing a wide range of topics related to MSM checks, including the use of Amigo-boras (see Appendix 3). A second round of interviews was held in the period February 2017 – June 2017, with a total of eight respondents in six interviews (for topic list, see appendix 4). The respondents were a mix of individuals working at the RNLM, the Ministry of Security and Justice and third-party developers involved in the Amigo-boras project. Again a topic list was used, this time with a narrower range of topics (see Appendix 4), as the interviews were aimed specifically to gather information on the use of Amigo-boras.

Additional data was collected through focus groups with border patrol officers. These group conversations were organized in the period October 2014 – January 2015. Border patrol officers were asked to give their opinion on certain developments or respond to statements made by other officers the researchers had heard during the fieldwork, including the use of Amigo-boras. In total thirteen focus groups were organized at seven different locations, resulting in twenty five hours of conversation. Officers taking part in these focus groups were a combination of experienced and less experienced officers and officers of different ranks and positions. On average eight officers took part in the focus groups.

The data from the interviews and focus groups will be supplemented with policy documentation and political debates regarding Amigo-boras. The search engine OpMaat was used to find policy documents and transcripts of parliamentary debates regarding Amigo-boras and the Mobile Security Monitor in the period January 2011 – March 2017. In total a number of 297 documents were found and analyzed.

Lastly, the chapter will draw from information collected during various ride-along sessions with the RNLM. During the period of October 2013 – March 2015, before the implementation of Amigo-boras for crime control purposes, two researchers were present at MSM checks at highways near the borders with Belgium and Germany. Depending on the capacity of the border patrol and the events during the checks, shifts lasted between four and seven hours. Researchers went on fifty-seven tours with the officers on seven different locations, each visited at least six times, at which the point saturation of data was reached. During 800 hours of ride-alongs a large number of unstructured field interviews were held with the border patrol officers present at the MSM checks. These conversations were informal in nature. Although there was no specific topic list or a structured approach for these conversations, they would often be about what was happening during the checks, the use of Amigo-boras or the work of the border patrol officers in general. Valuable information from these conversations was recorded in field notes.

The data described above was analyzed using the ATLAS-ti software. Quotes and important information was labeled with the codes specific to Amigo-boras such as *goals, development, criminal law enforcement, implementation* and *future,* with additional labels for broader concepts such as *borders, rules and regulation* and *conflation of crime and migration*. For each of the labeled texts it was determined if and how it would fit the five elements of function creep. To address the top-down or bottom-up part of the research question, each labeled quote was attributed to either a street-level source or a policy-level source.

8.4 Smart camera's and immigration control in Dutch border areas

Article 22 of the Schengen Border Code states that the internal borders of the Schengen area may be crossed without a border check, effectively forbidding systematic border control between member states. Article 23 in its turn does allow policing in border areas, as long as this does not equate systematic border control. The Mobile Security Monitor (MSM), as carried out by the Royal Netherlands Marechaussee, is the Dutch interpretation of this article. MSM checks are spot checks which can be found on the highways in a twenty kilometer zone from the border, trains that cross the border into the Netherlands and intra-Schengen flights on airports (see also: Van der Woude, Brouwer & Dekkers, 2016; Van der Woude, Dekkers & Brouwer, 2016). It should be noted that Amigo-boras is only used for MSM checks on highways and not on trains or airports.

As per article 50 of the Dutch Aliens Act and article 4 sub 1g of the Police Act, RNLM officers can act to combat irregular migration, identity fraud and human smuggling during MSM checks. This is done by checking the identity, nationality and residential status of individuals. MSM checks are therefore first and foremost an instrument of migration control. During the checks, officers can stop anyone they think should be checked - they are not bound by a requirement of reasonable suspicion - as long as it is with the previously stated aim of MSM checks in mind. However, should an officer encounter a criminal offence during an MSM check, for example a drug related

case, the officer is allowed to take action. It is important to note that an officer is not allowed to initiate a check on a suspicion outside of irregular migration, identity fraud or human smuggling. For example, if an officers would spot a person who he suspects, without there being reasonable suspicion, being involved with drug trafficking, the officer is not allowed to stop that person for an MSM check based on that suspicion.

Up until 2010 the RNLM was allowed to conduct as many MSM checks as they saw fit. However, in 2010, after the rulings of the European Court of Justice in the Melki and Abdelli cases,[86] the Dutch Council of State concluded that the MSM checks were too similar to border control and therefore in violation of the Schengen Border Code. As a results, MSM checks were put to bounds in the form of article 4.17a of the Dutch Aliens Act. This article sets several limitations to the frequency, duration and intensity of MSM checks. For example, checks on the highways can only be six hours a day with a maximum of ninety hours a month for each highway. In addition, the rulings in the Melki and Abdelli cases stated that border police activities should be based on intelligence that justify the need for border checks, such as previous results and concrete information on offences.

One of the RNLM's responses to these limitations and requirements was to start working on the principles of intelligence-led policing. The aim was to make MSM checks more efficient and effective by using data analysis to show when, where and who to check while still operating within the legal limitations. Amigo-boras is part of this shift towards more intelligence-led MSM checks. The system was officially introduced by the RNLM in august of 2012 and was designed to gather data on cross-border traffic and use automated risk profiling to assist border patrol officers in selecting vehicles for MSM checks (see for more: Dekkers, Van der Woude & Van der Leun, 2016; Dekkers & Van der Woude, 2016). In the section below we will first discuss how border officers perceived the system and the application thereof, followed by the perspective of policy-makers.

Street level perceptions: Technological skepticism an crimmigrant stereotypes

During the fieldwork Amigo-boras was brought up often as topic of conversation. From these conversation it soon became apparent that officers did not hold the system in high regard. Officers expressed their frustration with the decision to use Amigo-boras just to enforce migration law. In their view limiting the scope of the system was a missed opportunity to combat cross-border crime (see Chapter 6 for more on this subject). During MSM checks officers came across a wide range of crimes outside of identity fraud and human smuggling. Drug trafficking, human trafficking, theft, weapons trafficking and money laundering were mentioned on a regular basis by officers during the fieldwork. A system like Amigo-boras could, and in the eyes of the majority of RNLM officers should, be used to combat these forms of crime. During the focus groups officers expressed opinions which were broadly held among officers:

> *'Amigo-boras, you can hook it up to anything. You can use data on stolen vehicles, […] open warrants, when somebody still has to go to prison, but they want to keep us as the core business: human trafficking and smuggling.'*

> *'It is very frustrating. The thing cost millions and we don't use it. I mean, it can do a lot, but we don't use it.'*

What added to the officers' frustration was the fact that they did not see Amigo-boras as having any added value in selecting vehicles for migration purposes. The risk profiles used by Amigo-boras were primarily aimed at the origin of the license plate: a profile therefore equaled a country. Officers stated that they were perfectly able to make the same distinction on their own by simply looking at the vehicle. In the eyes of the officers the system therefore did not do anything that officers themselves could not do. Officers indicated that they had little use for the system when it came to making selections:

> *'To be honest, as an [officer making selections] I don't need Amigo-boras, because it doesn't have specific enough information. It's all trends like, that many Polish vehicle pass by. Yes, I know, I can see that myself.'*

> *'If you only want to respond to [Amigo-boras] hits, that's fine. But then it should be actual hits and not some general profile.'*

In the experience of the officers, because of the general profiles used by Amigo-boras, the vehicles flagged by the system were rarely accurate. Officers could not recollect any significant cases coming from an Amigo-boras hit, which is supported by the observations during the fieldwork.

However, officers did see a solution to these issues in connecting the license plate recognition component of Amigo-boras to criminal justice data. This way the system could be used to identify vehicles that have previously been linked with criminal

86 See: Court of Justice of the EU, 22 June 2010, Cases C-188/10 *(Melki)* and C 189/10 (*Abdeli*).

activities or vehicles linked to wanted individuals in the cross border traffic. The majority of officers were in favor of a broad application of this method, going beyond identity fraud and human smuggling. Information on drug traffickers, thieves and stolen vehicles could all be used to combat cross-border crime. This would at the same time give Amigo-boras a great added value to the officers, as it was impossible for them to memorize every license plate linked to crime. While the above shows a clear *unsatisfied demand* for a new function, Amigo-boras was being controlled from a central location leaving officers without opportunity to add such data on their own.

It should be noted that the ideas of using Amigo-boras to combat cross-border crime fit in with the officers' sentiments regarding the MSM as a whole (see Chapter 5 for more, also: Van der Woude, Brouwer & Dekkers, 2016). During the observations and focus groups many officers expressed that the MSM was not being fully utilized. In their view, the interpretation of the cross-border crime aspect of the MSM was too limited. As explained by the RNLM officers during the focus groups, the safety of the state included nearly any form of crime.

> *'The police is for the safety of the streets, the RNLM for the safety of the state. This includes catching those who carry weapons, are fleeing the country or are known drug offenders.'*

> *'[The MSM is for combatting] everything that could threaten the Dutch rule of law and endanger society. Including drugs, which is dangerous for people.'*

A majority of RNLM officers therefore saw it as their duty to combat crime in the broad sense of the word and the limited scope of the MSM - as it was found in the legislation - was seen as a missed opportunity to combat cross-border crime in the Netherlands. Interestingly, in their description of crime officers often referred to specific nationalities. During the focus groups officers gave examples such as:

> *'If you stop Moroccans, for example, than you know it could be drugs. If you stop Lithuanians, or whatever, maybe a stolen vehicle. Each demographic has its own thing.'*

> *'I think there is evidence that, when it comes to human trafficking, that's the Bulgarians.'*

These stereotypes on which nationalities would be involved with what sort of crime were pervasive among border patrol officer and characterized by a lack of nuance (see for more: Brouwer, Van der Woude & Van der Leun, 2017). When selecting vehicles without the assistance of Amigo-boras, officers would make decisions based on these stereotypes (see also Chapter 5). Crime was heavily associated with specific nationalities and played a significant part in the decision-making process of border patrol officers. In line with the *changes in the political arena* surrounding migration that fuel crimmigration, migration control had an explicit overlap with crime control in the eyes of the border patrol officers.

Policy perceptions: Calls for more border security and adapting policies

Now the views on Amigo-boras and cross-border crime from a street-level perspective are clear, it is time to focus on the same subjects from a policy perspective. For this we will start at the earliest stages of development of Amigo-boras. While the system was officially introduced in August of 2012, the interviews indicated that there had been an extensive development period before that. The RNLM had a need for more data on cross-border traffic in order to make the MSM more effective. After a development phase of several years in which the aims of the system were determined and the technology developed, a pilot project was initiated in 2007 to test the first version of Amigo-boras. According to three respondents in the second round of interviews involved in this pilot, the goals were to test if the technology was functional and what the possibilities of the system were. Regarding the second question, the RNLM took a broad approach. The focus of the pilot was to test what the system could do, which included many features such as the use of several criminal justice 'black lists' to see if known criminals were crossing the border. Questions regarding the legal possibilities, limitations of available features and if all of the options were in line with the goals of the MSM would be a concern for after the pilot.

The political discourse in 2012, when Amigo-boras was officially introduced, shows that the RNLM regarded the pilot as a success but opted for a more narrow application of the system. Amigo-boras was to be used for a specific goal: enforcing article 50 and 51 of the Aliens Act 2000 within the legal boundaries found in article 4.17a of the Aliens Decree 2000.[87] In other words, the system was to be used to combat irregular migration, identity fraud and human smuggling, an exact match to the official mission statement of the MSM (Dekkers, van der Woude & Van der Leun, 2016). The Minister of Migration, Integration and Asylum at the time was also very clear that would be

87 Tweede Kamer, vergaderjaar 2011–2012, 19 637, nr. 1492.

the only application of Amigo-boras. In regards to connecting the system to criminal justice data he stated:

> *'No, there will be no systematic checks of comparison of license plates (or vehicle information) with databases. The only case in which this is possible is in extraordinary circumstances of a grave or substantial breach of the law or public order or in the case of vital emergency efforts. […] There will be no automated connection to databases'* [88]

This indicates Amigo-boras was to be used for a clearly defined purpose that matches the mission statement of the MSM checks. On a first glance, the idea of a *policy vacuum* as described by Mordini and Massari (2008) therefore does not seem to apply to this case study. However, in the same year in a response to a report of the Committee Integral Oversight of Repatriation,[89] the Minister of Immigration, Integration and Asylum makes a different statement regarding the use of Amigo-boras:

> *'Amigo-boras, the camera system of the RNLM, is primarily used to support the MSM and enforcing the Aliens Act right now. The limitations to the MSM also dictate the use of the camera system in enforcing the Aliens Act. We are looking into the possibilities to use Amigo-boras for crime control purposes.'*[90]

This shows that the aims of the system were more fluid than was implied earlier. During the first round of interviews two respondents made an interesting remark regarding the original intentions of Amigo-boras. They stated that while the focus of Amigo-boras was limited to the enforcement of migration law during its introduction, the idea had always been to use it for more than that. However, it would be easier to get the parliament to approve the system if the focus was more narrow. Therefore the decision was made to start with just the application for migration control and to expand on that in a later stage. This perspective is supported by the fact that during the pilot phase of the system several different functions were tested.

The political discourse indicates that, similar to the sentiments of the border patrol officers, politicians were not content with the narrow use of Amigo-boras and soon after its introduction the migration focused application was being reconsidered. Transcripts of political debates show that some politicians thought the system was being under used as well and the application of the system should be expanded (see also: Dekkers, Van der Woude & Van der Leun, 2016). Early on, possibilities were seen to catch drug traffickers or fuel thieves by using Amigo-boras, with later additions of terrorism and child sex trafficking.[91]

The requests to expand the use of Amigo-boras beyond its original purpose are in line with what Mordini and Massari (2008) call an *unsatisfied demand* for a particular function. These opinions do not come as a big surprise, as at the same time a call for stricter border security in general could be observed in the political discourse. The restrictions imposed by the Schengen Border Code and article 4.17a of the Dutch Aliens Act were seen as a hindrance by politicians (see also: Dekkers, Van der Woude & Van der Leun, 2016). They therefore requested to see if the regulations could be stretched or circumvented in any way. These reactions should be viewed within the broader context of the developments of migration in Europe. As many European countries, the Netherlands has seen a change in its views on migration (Barker, 2012; Van der Woude, Van der Leun & Nijland, 2014; Van der Woude & Van Berlo, 2015). The literature shows that while The Netherlands was originally a country known for its tolerant views on migration, this has changed in the last decade. In line with the idea of crimmigration, immigrants are increasingly seen as a potential security threat. This combined with the increase of immigrants due to the migration crisis has led to calls for more control over national borders and has put the open borders of the Schengen area under scrutiny. The unsatisfied demand visible in the case of Amigo-boras could therefore be considered to be an outcome of a *change in the political arena* on the topic of migration, as the expansion of Amigo-boras could possibly provide some of the sought after increase in border security.

But wanting the system to do more could be a mere pipedream if this was not actually possible. To see if Amigo-boras was able to meet the unsatisfied demands, the RNLM would have to run tests. The results from the pilot phase in which similar functionalities were tested were not conclusive enough. The political discourse shows that in April of 2013 tests had indeed started to see how Amigo-boras could be used for crime control purposes.[92] The system was connected to criminal justice data to see what the results would be. In line with Dahl and Sætnan's (2009) requirements for function creep, the tests showed that Amigo-boras was able to take on new tasks and

88 Tweede Kamer, vergaderjaar 2011–2012, 19 637, nr. 1492.
89 In Dutch: Commissie Integraal Toezicht en Terugkeer, CITT.
90 Tweede Kamer, vergaderjaar 2011–2012, 19 637, nr. 1526.
91 Tweede Kamer, vergaderjaar 2012–2013, 24 077, nr. 312; Tweede Kamer, vergaderjaar 2013–2014, Aanhangsel 2226; Tweede Kamer, vergaderjaar 2012–2013, 33 542, nr. 5; Tweede Kamer, vergaderjaar 2013–2014, Aanhangsel 1189; Plan van Aanpak Kindersekstoerisme; Tweede Kamer, vergaderjaar 2012–2013, 31 051, nr. 11.
92 Tweede Kamer, vergaderjaar 2013–2014, 19 637, nr. 1760.

it was concluded that it was both technologically and administratively possible to use Amigo-boras for crime control purposes. [93] After a careful negotiation process with the police – the RNLM was treading on police turf after all - an official agreement was signed on January 28th 2016 and Amigo-boras could be formally used to combat a wide range of criminal activities.[94] The Minister of Security and Justice explained the practical implications of the newly acquired possibilities in a briefing:

> *'It will not just be about police data regarding missing persons or internationally wanted persons, but also data in order to combat human smuggling and human trafficking, organized weapons smuggling and organized illegal trade in drugs. Taking action after a vehicle registered in Amigo-boras […] has crossed the border will be done as much as possible by the Royal Netherlands Marechaussee.' [95]*

In the same briefing the Minister makes an important addition to this:

> *'Regarding Amigo-boras for crime control purposes, combatting human smuggling and human trafficking should be the priority.'*

As explained in an earlier publication (Dekkers & Van der Woude, 2016), Amigo-boras primarily looks at the license plates of every vehicle that passes it. The data in question would therefore be license plate information related to various types of crime. During an in-depth interview one respondent confirmed the new abilities of Amigo-boras stated by the Minister of Safety and Justice. The system would be connected to data on the trafficking of drugs, weapons and humans. It was explained that one of the factors that lead to this decision was that these three forms of crime had a connection to terrorism, as the networks behind these forms of crime tended to overlap. However, in a different interview it was indicated that the data being made available to Amigo-boras would include trafficking of drugs, weapons and humans, but would not be limited to those three forms of crime. A list was presented which also included money laundering, child sex tourism, missing persons, wanted international criminals and stolen vehicles. During the interview it was emphasized that all of these had an element of border-crossing, which was important in the context of the MSM. In addition to the types of crime mentioned above, data related to police investigations would be added, such as warrants, requests for a DNA sample or extradition.

93 Tweede Kamer, vergaderjaar 2013–2014, 28 684, nr. 411.
94 Brief Regering 28684-470, kenmerk 775734.
95 Brief Regering 28684-470, kenmerk 775734.

However, in the same interview it was stated that the list was not fixed. The covenant with the police itself did not contain a specific list of types of crimes or applications for the Amigo-boras system. It was explained that that part was intentionally left open ended with flexibility in mind. By leaving a specific list of applications out of the covenant, changes could be made without having to formally create and sign a new covenant. This adds to the idea of a *policy vacuum*, as there is no fixed goal and changes in the application of the Amigo-boras system can be made without much effort. At the same time it is an important aspect of the *slippery slope* effect that Mordini and Massari (2008) describe. If there are few barriers to add new data or functionalities to Amigo-boras, the overall application of the system can slowly change over time with each new addition. Although this is a theoretical situation right now, the interviews give reason to think this could become reality in the future. During the second round of interviews four out of five respondents who were still involved in the Amigo-boras project indicated that they thought that application of the system could be further expanded in the future.

During one of the interviews in the second round of interviews an interesting remark was made regarding the new data available to Amigo-boras. In the perspective of the respondent, even though Amigo-boras was able to do more, nothing had changed for the RNLM. Officers still had the same powers, as no legal changes had been made. The RNLM had always been allowed to handle cases of drug, weapons or human trafficking. The new application of Amigo-boras had not changed that, it only facilitated the RNLM to make better use of its policing powers. This same logic can also be found in official policy documents.[96] As explained in the beginning of this section, it is true that RNLM officers were always allowed to act on criminal offences during MSM checks. but officers could only do so if they encountered such offences while checking for irregular migration, identity fraud and human smuggling and not actively search for other forms of crime. The new application of Amigo-boras does not follow this logic, as it does actively search for vehicles related to criminal offences. The argument that nothing will change in the execution of the MSM can therefore be questioned.

8.5 Conclusion and discussion

The aim of this chapter was to shed light on the assumptions, expectations and rationales that have contributed to a broadening of the scope of usage for Amigo boras. In doing so, I aim to critically analyze the extent to which these assumptions,

96 Tweede Kamer, vergaderjaar 2012–2013, 31 051, nr. 11; Tweede Kamer, vergaderjaar 2013-2014, 28 684 nr. 411.

expectations and rationales are reflections of 'crimmigrant' stereotypes of either street-level officers and/or policy-level officials, or both. The results show that while the function creep of Amigo-boras finds strong support from the street-level, it is initiated from a top-down, policy perspective as the major decisions and initiatives on how to use Amigo-boras come from politicians and policy-makers. An important part in the motivation to expand the use of Amigo-boras can be found in the views on the origin of cross-border crime. Both on the street-level and the policy-level the origin of cross-border crime and potential harm to society was for a large part found in foreign nationals. Border patrol officers had specific views on which nationalities would be responsible for what crimes and, while less specific, policy-makers indicated that criminal influences were coming from outside of Dutch borders. Human trafficking, drugs trafficking and terrorism are deemed forms of crime that need to be combatted at the border, but the restrictions to the MSM make the RNLM not well equipped to do so. Using Amigo-boras to combat those forms of crime - and more - can be a way to circumvent these restrictions, enabling the RNLM to act against various forms of crime that are not officially part of their mission statement. In line with Sklansky's (2012) idea of ad-hoc instrumentalism, border patrol officers are given more tools to combat cross-border crime during MSM checks. If unwanted immigrants cannot be stopped at the border using just migration law, the application of criminal law may be able to help. The expansion of Amigo-boras does not only find its origin in crimmigration, but in its turn also creates a new and quintessential case of crimmigration. By enabling the RNLM to actively search for vehicles connected to various forms of crime - be it via a detour using Amigo-boras – it implements a significant element of criminal law enforcement in an instrument aimed at migration control. Not only does this promote the crimmigration aspect in MSM checks, it could even be argued that function creep in this case has resulted in mission creep. With the new application of the Amigo-boras system the goals of MSM checks have changed, albeit unofficially, transforming migration checks into crimmigration checks. The strong influence of policy-makers in this process is also reason for more research of such. While crimmigration research is for a large part focused on either the legislative level or the street level, the current research indicates that the policy-level and its interaction with the legislative and street level is just as important.

A question that remains is where the expansion of the application of Amigo-boras will end. Officers are legally bound to keep their selection of vehicles during MSM checks aimed at suspicions of irregular migration, identity fraud and human smuggling. While selection based on suspicions of anything beyond that is not within their powers, Amigo-boras is used to by-pass that. Although this strategy is applied to a limited list of crimes right now, this could change if the political climate changes once again. The logic used by policy-makers that utilizing Amigo-boras for criminal law purposes changes nothing in the legal powers of RNLM officers and the system only assists in optimizing the legal possibilities that were already available could be used for any purpose, after all. This combined with the fact that the list of which crimes Amigo-boras can be applied to can be changed at any time gives the RNLM opportunity to use the system for anything it deems necessary. A possible outcome of this is that both Amigo-boras and the MSM could become something similar to the Swiss pocket knife of law enforcement. With a slight change, they could be used for anything at any time, creating a potential spiral of crimmigration and function creep.

This issue is not only relevant for the Netherlands but also in the larger context of the EU. In a recent recommendation the European Commission encouraged the use of license plate recognition technology in order to safeguard society: '*the use of monitoring and surveillance systems allowing for automatic number plate recognition for law enforcement purposes should therefore be encouraged, subject to the applicable rules concerning camera surveillance, including data protection safeguards.*' [97] While the commission refers to rules and safeguards it is not explicit in what these should be, leaving room for interpretation. The current case study shows that safeguards should be made more explicit, as legal principles such as purpose limitation can be by-passed using existing legislation and actors in the Amigo-boras case study did not seem to take issues regarding function creep and potential negative side effects in serious consideration. Assumptions on the link between crime and migration were found to be ingrained at a policy-level as well, after all, without proper justification or argumentation for these views. This is especially pressing with the development of interconnecting technologies on a European level in mind (Dijstelbloem, Meijer & Brom, 2011), meaning not just Dutch data could be used by Amigo-boras, but international data as well. Especially now other countries have plans to implement their own smart camera system at the border (NOS, 2016, 2017), this could mean that a European wide network of cameras could become the new digital border. Simply stating that rules should be taken into account and safeguards build, as the European Commission does, seems to be a lacking protection from preventing these digital borders from turning into the social sorting mechanisms that Lyon (2003, 2007) warns us about.

97 Commission Recommendation (EU) 2017/820 of 12 May 2017 on proportionate police checks and police cooperation in the Schengen area, C/2017/3349

The above indicates that function creep can be a catalyst for crimmigration and in a worst case scenario could instigate a *perpetuum mobile* of function creep and crimmigration. This raises the question if this rather bleak image could be observed in the case of Amigo-boras in practice. Surprisingly, while the necessary paperwork was signed in January of 2016, in May of 2017 the system was not yet utilizing the newly acquired capabilities. Four respondents in the second round of interviews confirmed that on paper Amigo-boras was able to use criminal justice data, technical difficulties prevented the system from actually doing so. As a result, the application of the system in practice had not changed since its introduction. The aforementioned borderline dystopian view of digital borders therefore has not become reality, but at the same time this case study shows that it should not be disregarded just yet.

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