



BEUCITIZEN
BARRIERS TOWARDS EU CITIZENSHIP

ACCESS TO TRAVEL DOCUMENTS

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Document Identifier

D7.6 Report: 'Case study (IV): Obstacles that citizens face in gaining access to travel documents'

Version

1.0

Date Due

31.05.2016 (M37)

Submission date

31.05.2016

WorkPackage

7 Civil Rights

Lead Beneficiary

2 UA

Dissemination Level

PU



Grant Agreement Number 320294
SSH.2012.1-1



Change log

version	Date	amended by	Changes
1.0	31.05.2016	Henri de Waele	Final document delivered

Partners involved

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I. INTRODUCTION

1. Context of the present report

The objective of Work Package 7 (WP7) is to study, from the perspective of European Union citizenship, specific problems individuals face in exercising their civil rights and liberties in areas which fall within, but also in areas that lie beyond the scope of EU law.

After the prior identification and critical assessment of the nature and scope of the civil rights that citizens are entitled to (task and deliverable 7.1), the modes of transposition and the mechanisms available at EU level and national levels for granting and enforcing civil rights were explored, with a view to identifying institutional, legal, procedural and practical barriers that EU citizens and third-country nationals face in gaining access to justice (task and deliverable 7.2). The ultimate objective of WP7 is to analyse possible limitations and restrictions of different natures that undermine the effective exercise of these rights, on the basis of four in-depth case studies. The case studies to be undertaken within the Work Package relate to i) an exploration of the obstacles that citizens face in trying to enjoy their core citizenship rights (task 7.3), (ii) an exploration of the difficulties faced by EU citizens when trying to enjoy the freedom of expression in the context of media law and policies (task 7.4), (iii) a study of obstacles that (mobile) EU citizens and their families face in dealing with life events (task 7.5), and iv) a study on obstacles that (mobile) EU citizens and their families face in gaining access to travel documents (task 7.6).

It was decided in July 2015 at the bEUcitizen WP meetings in Zagreb that the partner institutions participating in task 7.6 would be UA, UU, CEU, UCPH and UNITN (replacing the earlier designated UNIOVI). Consequently, country reports were to be produced on, respectively, Belgium, the Netherlands, Hungary, Denmark and Italy. In keeping with the approach adopted in the WP thus far, the task leader (UA) drafted the following questionnaire for the purpose of drawing up country reports, a first draft of which was disseminated in June 2015 and the final version in August 2015. The current general report draws together the threads from the individual country reports that were compiled at the end of 2015. While its main aim, in line with the WP objective, is to identify possible barriers, the conclusions also contain some (policy) recommendations and suggestions for lowering or eliminating these.

2. Access to travel documents: general remarks and theoretical framework

The focus in task 7.6 lies on (barriers to) the acquisition of travel documents in selected EU Member States. In ordinary usage, a travel document is considered to be an identity document issued by a government or international organization that aims to facilitate the movement of individuals or small groups of persons across

international boundaries. Usually, travel documents assure other governments that the bearer may return to the issuing country. They are often issued in booklet form, so as to allow other governments to place visas as well as entry and exit stamps into them. National identity cards are nowadays generally issued in a 'bank card' format.

The most common travel document is a passport. Passports are travel documents that also serve as proof of nationality from the issuing country. Although generally accepted by the majority of countries in the world, some issuing countries expressly exclude the validity of passports from nations not recognised by their governments.¹ Passports usually gives the bearer more privileges, like visa-free access to certain countries. The term 'travel document' however is sometimes used only for those documents which do not bear proof of nationality, such as a refugee travel document.² Conversely, driver's licenses are usually not considered to be travel documents properly so-called, since they carry no information on the bearer's nationality. A related practice that has been established across the world involves the issuing of so-called *laissez-passer* documents. A *laissez-passer* is often for one-way travel to the issuing country for humanitarian reasons only, such as restoring family links. Some national governments issue *laissez-passer* documents to their own nationals as emergency passports; others issue them to people who are stateless, or who are unable to obtain a passport from their own government, or whose government is not recognized by the issuing country.

Alongside passports (either the standard or emergency type), identity cards constitute the second main category of travel documents that have entered in common usage nowadays. Though primarily intended as a means of identification within a country, in several cases they may also be used (and suffice) for realising cross-border movement. In the European Union, both passports and identity cards are to conform to a standard format, prescribed in Regulation 2252/2004.³

Passports and identity cards remain crucial documents for EU citizens to have in their possession, in order to gain access to territory (including that of their own Member State) and enjoy their free movement rights.⁴ At

¹ John Torpey, *The Invention of the Passport. Surveillance, Citizenship and the State* (Cambridge University Press, 2000), pp. 159-160.

² In parts of EU secondary law, passports and travel documents have been juxtaposed as well (e.g. Regulation 2252/2004), but if that distinction were to be followed here, the attention would remain restricted to a marginal residual category, and the task were to become largely devoid of purpose.

³ Council Regulation (EC) No. 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (O.J. 2004 L 385/1), as amended by Regulation (EC) No. 444/2009 of the European Parliament and of the Council of 6 May 2009 (O.J. 2009 L 142/1, and corrigendum in O.J. 2009 L 188/127).

⁴ The broader background, with particular attention to entrance and naturalisation issues, has been addressed by WP10 of the bEUcitizen consortium; see in particular Report D.10.1, 'Rights and Obligations of Citizens and Non-Citizens in Selected Countries'.

the same time, admittedly the importance of both types of documents has diminished since the creation of the Schengen zone. Strictly speaking, it is currently no longer necessary for an EU, European Economic Area or Swiss citizen to possess a valid travel document in order to gain access to territory and enjoy their free movement/circulation rights. In theory, if an EU, EEA or Swiss citizen is able to prove his/her nationality by any other means (e.g. by presenting to border officials either an expired national identity card or passport, a citizenship certificate, or a valid or expired driver's license), he/she must be permitted to enter and reside in the EU, EEA or Switzerland without a visa or any other additional documentation requirement being imposed. An EU citizen who is unable to satisfactorily demonstrate his/her nationality, must nonetheless be given every reasonable opportunity to obtain the necessary documents, or to have them delivered within a reasonable period of time. Thus, arrest, detainment and/or imposition of other types of (immediate) sanctioning qualifies as a disproportionate response in such situations, falling foul of the standards of protection extended under the applicable EU law rules.⁵ Obviously, for travels to countries outside the Schengen zone, it continues to be a strict necessity even for EU citizens to ensure that they are in possession of the appropriate travel documents, since they may otherwise be denied entry (or even exit).⁶ Moreover, Schengen countries retain the possibility to adopt national rules that oblige persons to hold or carry certain papers and documents when present on their territory.

While the acquisition or renewal of travel documents involves as such a fairly routine administrative transaction, persons may encounter substantial difficulties and hindrances nevertheless. For starters, as no uniform procedures have been agreed at EU level, there are likely to be differences in the venues, authorities or contact points to approach. The costs associated with a first acquisition or renewal may also vary between Member States and raise particular hurdles (in some countries more than in others). The foregoing also entails that the factors informing the choice between a passport or identity card will necessarily not be the same everywhere, even when the added value of the former over the latter (*viz.* a broader acceptance and access to the territory of non-EU states) are clear. Such real or imagined restrictions and discomforts, resulting from divergent national idiosyncrasies, inevitably produce *barriers to EU citizenship* that are preferably lowered, and eventually eradicated altogether. It goes without saying that, to facilitate their lowering and succeed in their eventual eradication, such barriers will need to be identified first. This is what task 7.6 purported to achieve. The main findings and insights that could be drawn from the different country reports produced at the end of 2015 are summarised and discussed in this general report.

⁵ Cf. ECJ, Case C-215/03 *Salah Oulane v Minister voor Vreemdelingenzaken en Integratie*, ECLI:EU:C:2005:95.

⁶ Even with regard to the Schengen zone, the 'Your Europe' website (<http://europa.eu/youreurope/citizens/travel/entry-exit/eu-citizen/index_en.htm> recommends EU citizens to "take a passport or ID card with you, so you can prove your identity if needed (if stopped by police, boarding a plane, etc.)."

3. Structure of this report

In line with the questionnaire that originally informed the different country reports, the current survey is composed of six parts. Part I, by way of ‘preparing the ground’ for the subsequent analysis, pertains to the typology and format of travel documents that are in general usage across the various Member States. Hereby, it is also verified whether the documents that fall within the ambit of Regulation 2252/2004/EC comply with the designated format there prescribed. In part II, we turn to issues of acquisition, renewal and loss, focusing first on the situation for nationals resident in their own country, and then considering the situation for EU citizens resident in a different Member State than their own. Part III concentrates on the inclusion of biometric data and its effects, exposing various dimensions of this operation in order to find out whether this may have exerted a ‘chilling effect’ on the acquisition of travel documents, or otherwise raised (public) concerns. Then, the pivotal Part IV places the spotlights on actual or potential difficulties that EU citizens may experience in gaining access to travel documents in a practical or technical sense. Part V shifts attention to third country national family members of EU citizens, who are either *de iure* or *de facto* likely to encounter similar obstacles in the Member State they seek to access, or happen to reside in. Lastly, by way of ‘catch all’ endeavour or safety net, Part VI turns to any other (potential) obstacles that were flagged in the country reports that were produced by the participating institutions. The main findings of this general report are summarily rehearsed in the subsequent ‘Conclusions’ section.

II. TYPOLOGY AND FORMAT OF TRAVEL DOCUMENTS IN GENERAL USAGE

1. Typology

In order to assess the state of play with regard to potential obstacles in the access to and usage of travel documents, it was considered a logical first point of departure to inquire which types are generally made available in the respective Member States, and whether those documents that fall within the ambit of Regulation 2252/2004/EC comply with the designated format there prescribed.⁷ The first question posed sought to find out which are the main types of travel documents are in common usage in the countries concerned.

Within the scope of task 7.6, we adhere to the PRADO taxonomy of travel documents.⁸ It is suggested by that database that the categories A, B and C, i.e. passports, identity cards and visa (necessary to enter specific third countries and to be obtained in the EU country of residence), are the most established and broadly accepted types of travel documents in the Member States. It thus appeared justifiable to place these at the specific focus of the analysis.⁹ Rapporteurs were however specifically requested to verify whether the information they were able to provide corresponds with that officially registered in the PRADO database, so that it could be verified whether the latter is perhaps inaccurate or no longer up to date.

In general, it emerged that indeed, the most established and broadly accepted types of travel documents in the Member States are passports, identity cards and visa. Special renditions, such as diplomatic passports, emergency travel documents, the seafarer's ID and particular types of visa are equally used and recognised. Driver's licenses are ordinarily not considered a travel document *stricto sensu*, but merely as a tool to identify the holder (yet, in a country like Belgium, a foreign driving licence is not as such accepted as an ordinary means of identification). Denmark stands out here as a country that does not issue identity cards, and does not recognise these as valid travel documents for its own nationals (but not other EU citizens).

As regards the outward appearance of the document, there are some minor variations, such as in Italy, where in the Province of Bolzano/Bozen (*Alto Adige/Südtirol*), the ordinary ID card is green and written in Italian and

⁷ A commonplace assumption in EU law is that Regulations are applied uniformly, due to their direct applicability; this is however a matter that remains in need of empiric verification, since any actually present deviations might lead to hindrances that will still need to be addressed and eradicated.

⁸ PRADO is the Public Register of Authentic travel and identity Documents Online, set up under the auspices of the Council (see <<http://www.prado.consilium.europa.eu/>>). It contains technical descriptions, including information on some of the most important security features of identity and travel documents of countries within the EU, all Schengen countries, as well as some neighbouring countries.

⁹ Relegating e.g. driver's licenses (categories F/G), crew member certificates (L), and civil status documents (P).

German (i.e. the two co-official languages within that Province); similarly, in the autonomous Region Valle d'Aosta/Vallée d'Aoste the ID card is written in both official languages, Italian and French, and the colour is blue. In the provinces of Trieste, Gorizia and Udine a bilingual ID card (i.e. written in Italian and Slovenian) are issued upon request. On a related note, in Belgium, if the municipality issuing the document is located in a French, Dutch or German-speaking region, the ID card is issued in French, Dutch or German.¹⁰

Electronic identity cards have come in general usage, and may ordinarily also be dispensed by consular authorities present in other Member States. The Italian report made clear however that, according to Article 7 vices-ter of Law No. 43 of 31 March 2005 (which introduced the electronic passports, visa and residence permits in Italy from 1 January 2006 onwards) these may only be issued inside, and not outside the country.

On the whole, the PRADO database appears to be correct and up to date. The sole exception that emerged in this respect is Hungary. As regards this country, the PRADO database does include both major categories of passports, as well as the travel document for refugees, the travel document for persons enjoying subsidiary protection, the travel documents for TCNs with immigrant or permanent resident status, the travel document for stateless persons, as well as ID card; nevertheless, it:

- fails to offer an official English translation for “official passports”;
- fails to enumerate the three different types of personal passports, contrary to official passports the three types of which are easily distinguishable;
- fails to include the ETD, the travel document for beneficiaries of temporary protection, and the cross-border certificate;
- is inaccurate regarding the travel document issued for a single journey;¹¹
- shows inconsistency as regards ID cards. It is debatable why ID cards numbered HUN-HO-09001, HUN-HO-09002 and HUN-HO-09003 are in category J (Residence-related documents), and not in category B (Identity cards).¹²

¹⁰ As established in article 4 of the Royal Decree of 25 March 2003 on identity cards (*Arrêté royal du 23 Mars 2003 relatif aux cartes d'identité / Koninklijk besluit betreffende de identiteitskaarten, Moniteur Belge / Belgisch Staatsblad* 28 March 2003), which entered into force on 7 April 2003.

¹¹ Although the wording of the PRADO website suggests that it can be issued to any non-Hungarian national, it may only be given to refugees, persons enjoying subsidiary protection and beneficiaries of temporary protection, as well as TCNs with immigrant or resident status or stateless persons; issuing such a document for TCNs with immigrant or resident status or stateless persons is possible pursuant to Government Decree No. 101 of 1998.

¹² Since Government Decree No. 414 of 2015, section 7, p. 1 rules that ID cards can be issued to Hungarian nationals, TCNs with immigrant or resident status, refugees and persons enjoying subsidiary protection as well, these ID cards might be the ones issued for the latter three groups, although no evidence in PRADO supports it.

On a related note, it was flagged in the report on The Netherlands that the PRADO database only lists the Dutch, German and Belgian ID cards as 'identity documents', notwithstanding the fact that the Dutch government has published a list of countries which actually recognise the Dutch ID as a valid travel document (including Poland, Germany and Belgium).¹³

2. Domestic rules enacted in follow-up to the main EU instrument

The next question involved the flagging of any specific national measures enacted to give further effect to the main EU instrument regulating travel documents, i.e. Regulation 2552/2004/EC. It emerged that, regardless of the principles of supremacy, direct effect, and the direct applicability of Regulation 2552/2004/EC, all Member States surveyed adopted additional national measures to ensure or enhance the practical operation of the instrument in their domestic legal order. The locations where these have been placed within the domestic legal hierarchy appear appropriate.¹⁴

No clashes/overlaps or violations of the EU rules appear to have arisen either. As regards the conformity with the applicable standards and requirements contained in the Regulation, all Member States surveyed proceeded to include fingerprints in an interoperable format, they all designated a specific body for printing passports and travel documents,¹⁵ and the biometric features prescribed by the Regulation were integrally introduced. As regards the latter however, Belgium was more than 3 years late, for which it was taken to Court by the European Commission.¹⁶ In Denmark, though the requirement on biometric data in the passport was supposed to have been enforced since 2009, a short delay was experienced as the Danish police encountered some problems as regards the tender for the company to deliver the technology behind the new passports.¹⁷ Moreover, some municipalities used the services of a software company called Scan-Tech to transmit biometric data to the passport producing company. In March 2015, the association of municipalities, Local Government Denmark, unfortunately had to inform that 11.000 passports had been issued without the digital fingerprint, due to a software failure at Scan-Tech.¹⁸

¹³ See <<https://www.rijksoverheid.nl/onderwerpen/paspoort-en-identiteitskaart/vraag-en-antwoord/welke-soorten-reisdocumenten-zijn-er>>.

¹⁴ Rehearsing those locations here would go beyond the scope of this general report; details may be gleaned from the individual country reports attached.

¹⁵ Although whether the name was subsequently communicated to the Commission could not be verified in any case, nor whether the same body was designated by another Member State.

¹⁶ See <http://europa.eu/rapid/press-release_IP-12-1247_en.htm>.

¹⁷ See <<http://www.dr.dk/nyheder/politik/pas-med-fingeraftryk-paa-vej>>.

¹⁸ See <<http://www.kl.dk/Administration-og-digitalisering/Borgere-har-faet-fejlbehaftede-pas-id177085/>>.

3. Validity

From the country reports, it emerges that there exists a considerable variety in the general periods of validity of the different types of travel documents that are in common usage the Member States concerned. For example, in Belgium the normal 'lifespan' of an adult passport is 7 years, whereas it is 10 in Denmark, Italy and the Netherlands, but 5 in Hungary.¹⁹ In Belgium, the Netherlands and Italy, an ID card it is upon issue valid for 10 years, but 6 years in Hungary.²⁰

Related differences exist with regard to giving prior warning to the bearer upon (imminent) expiry of the document(s) in question, and the need to renew them. In The Netherlands, though not required by law, such a notice is sent by municipal authorities both for expiring passports and ID cards. In Belgium and Italy, only the holder of an ID card will receive such a notification. In Denmark and Italy however, no such prior warning is issued at all, leaving it to the bearer to remain vigilant and apply in time for renewal.

In both respects, in the interest of transparency legal certainty, upon a future amendment of the basic Regulation, it could be considered to demand a greater uniformity here – after all, there seems to be little reason for one country to maintain a shorter validity period than another; and in terms of attentiveness, citizens in any Member State would surely stand to profit from improved communication if they are alerted beforehand that the validity of the document(s) they possess is about the expire.

¹⁹ Though a 10-year-period is possible by special request.

²⁰ As noted above, Denmark does not issue ID cards.

III. ACQUISITION, RENEWAL AND LOSS

1. Venue, costs and timeframe

After the preliminary assessment of the typology and format, we took interest in collecting specific information with regard to the acquisition process, on where and how the documents are to be procured in the countries surveyed, and at what price. Equally worthy of note were believed to be any possible deviations applied in the situation of renewal or loss, including withdrawal, since these might prove more protracted, costly, or otherwise pose hindrances. Hereby, the focus was first placed on the situation for own nationals, after which the situation for resident EU citizens was considered.

As regards the venues where travel documents are ordinarily to be obtained, mostly citizens are to turn to district or municipal offices in their place of residence. Occasionally a central (state) department is (also) rendered competent, as is the case for the so-called KEKKH in Hungary (Central Office for Administrative and Electronic Public Services).²¹ In Denmark, since 2007, the responsibility for handling the issuance of passports was taken over from the police by the Danish municipalities. Conversely, in Italy the required fingerprints can only be taken by the police (also after the submission of the application), rendering it necessary to report to the police (*Questura*), a police commissioner's office (*Commissariato di Pubblica sicurezza*), or the national military police (*Carabinieri*).

The consular offices of most Member States are also able to issue passports and other travel documents, if properly equipped. However, currently only the Italian consulates in the EU countries and Switzerland, Norway, Principality of Monaco, San Marino and the Holy See/Vatican City can issue Italian ID cards,²² and as already mentioned, electronic ID cards may not be issued outside of Italy. Similarly and uncomfortably, due to a lack of the required technical facilities for incorporating biometric data, at present not all Danish representations abroad are capable of issuing passports.²³

The possibility to lodge an application for the documents through (digital) post has become quite common, though appearance in person to submit relevant materials (photographs, payment, fingerprints in case of passports) remains necessary. If resident in the country (i.e. not when applying at consular offices), the documents may also be received by post when ready. For electronic ID cards, Belgium even allows for a remote

²¹ Or local organs of the BMBÁH (Office of Immigration and Nationality), where it concerns e.g. travel documents for refugees or for third country nationals with immigrant or permanent resident status.

²² See the websites of the Ministry of Foreign Affairs (http://www.esteri.it/mae/it/italiani_nel_mondo/serviziconsolari/documenti_di_viaggio) and of the State Police (<http://www.poliziadistato.it/articolo/view/24725/>).

²³ E.g. the Danish embassy in Portugal.

application to an embassy or consulate, whereby the document is issued without further ado as long as the necessary formalities have been complied with. In Denmark, all citizens are expected to file a digital application for the acquisition or renewal of their passport, but municipalities will proceed to assist those who can prove they are unable to do so.

Turning to the financial side, as the overviews in the national reports in response to question 5 demonstrate, the prices of passports and ID cards deviate considerably from country to country. Thus, at present, a standard passport for adults comes at EUR 65 in Belgium, EUR 51,20 in The Netherlands, EUR 73.50 in Italy, EUR 84.93 in Denmark and EUR 25 in Hungary.²⁴ A standard ID card costs EUR 5.61 in Italy, EUR 15 in Belgium and EUR 50,40 in The Netherlands. They are however entirely free in Hungary. In 2011, rulings from a Dutch District Court, Court of Appeal and the Dutch Supreme Court led to the conclusion that the ID card would have been issued without charge, due to a lack of a proper legal basis for the charges, and in light of the statutory identification obligation incumbent on all nationals. After the adoption of a 'reparations law', the Supreme Court reversed its position in 2015, proclaiming the principal lawfulness of the fees imposed.²⁵ Special rates / surcharges apply when it concerns a second or third copy, in case of urgency, or when applying for the document abroad, pushing up the price to e.g. EUR 129 in case of lodging a submission at a Danish consular office, or as high as EUR 240 for an expedited passport procedure in Belgium. Despite this great diversity in rates, none of the national reports gives rise to the thought that a too high threshold has been imposed in this respect, particularly since in many of the countries studied, waivers or discounts can be granted to the less advantaged.

The timeframe for delivery of passports ranges between two days to two weeks between the application and obtaining in Italy. In Denmark and The Netherlands, the standard is two weeks here, while it is one week in Belgium and four weeks in Hungary. If an urgent procedure is followed, availability ranges from immediately (e.g. in Italy) to within 2 or 3 working days (e.g. Belgium and Hungary). ID cards become available immediately in Italy, but only within two weeks of application in The Netherlands, three weeks in Belgium, and four weeks in Hungary. As regards acquisition at representative offices abroad, the divergences between the Member States in which they are present are such that even per country no absolute (single) deadlines could be noted.

The application procedure and the costs are generally not different in case of renewal or loss, compared to a first-time acquisition. Hereby it is striking that renewal of the same passport is impossible in Hungary, Belgium, The Netherlands and Italy, yet possible in Denmark if the request is presented within three months of the

²⁴ But double this amount if valid for 10 years.

²⁵ See the original judgment of the Supreme Court of 9 September 2011, ECLI:NL:HR:2011:BQ4105, and its latest Judgment of 27 March 2015, ECLI:NL:HR:2015:745.

expiration date.²⁶ The extension is free of charge there, but can only be granted once. The extension is made with a stamp in the passport, will be given only for the duration of an upcoming travel, and cannot exceed one year.²⁷ ID cards may not be renewed in Hungary, Belgium, The Netherlands or Italy, yet in the latter country, pursuant to Law no. 133/2008 converting Legislative Decree no. 112 of 25 June 2008, the 10 year validity of a card valid on 26 June 2008 was extended by an additional 5 years by a special stamp (or certificate in case of electronic cards). Nevertheless, repeated problems arose due to the refusal of some other countries to recognise identity cards with the validity extension stamp for expatriation purposes. Consequently, Circular no. 23 of 28 July 2010 of the Italian Ministry of the Interior allowed those in possession of identity cards renewed by extension to request new ones.

2. Grounds for withdrawal and their application

The withdrawal of nationality for particular persons (especially jihadi fighters, or suspected terrorists) has been the subject of acrimonious debate recently. Most prominently in France, attempts were made to adjust the existing legal tools to facilitate this practice. On a related note, in a number of countries, intentions have been formulated to engage in a more rapid withdrawal of passports to prevent those with nefarious intentions from leaving (or re-accessing) the territory of the Member State. In the questionnaire, question 7 was focused on the available grounds on which Member States' public authorities are entitled, and have proceeded to withdraw a person's passport. A mixed picture arises, wherein the public order justification looms large.²⁸

In Hungary, the only official basis is 'invalidity', yet a long list of grounds / causal factors is advanced on the basis of which that conclusion may ensue (inter alia that the document has been damaged, has expired, because the owner is no longer entitled to it, or is used by somebody else). In Belgium, the long list reads that a passport can be revoked if the data concerning the nationality and identity of the holder are inaccurate, the holder has been subjected to a judicial limitation of his/her freedom, the holder is subject of an ongoing investigation of an offence set out by the article 199bis of the Belgian Penal Code, the holder is subject to measures provided by law restricting the freedom of movement for the protection of national security or public safety or the maintenance of public order, prevention of criminal offenses, or the health or moral protection of rights and freedoms of others. In addition, Belgian passports and travel documents may also be withdrawn and invalidated if the holder is established to present a clear substantial risk for the maintenance of the public order or the protection of nationals citizens or public security. Moreover, presented as part of the fight against the terrorism, the Belgian government has adopted three projects of law proposing the temporary withdrawal

²⁶ Passport Executive Order, section 21 (1).

²⁷ Passport Executive Order, section 21 (2).

²⁸ The related entrance and naturalisation issues have been studied from an insiders/outsideers (inclusion/exclusion) perspective in WP10, and discussed in particular in the first and second chapters of Deliverable 10.1, 'Rights and Obligations of Citizens and Non-Citizens in Selected Countries'.

of the passport and other documents of persons suspected of supporting terrorist organizations.²⁹ On substance, the Dutch system is very similar, while procedurally distinguishing hereby between withdrawal (*inhouding*) and a declaration of expiration (*vervallenverklaring*). Comparably, in Denmark the list of grounds for withdrawal is exhaustive, and comprises the following cases:

- When charges are pressed against the person concerned for a criminal offence which can be presumed to carry a sentence of imprisonment, and on the merits of the case or the circumstances of the suspect there is a reason to expect that they will avoid the responsibility by exiting the country and staying abroad;
- When the person concerned has been imposed a sentence of imprisonment which has not been served yet, or they have been imposed a pecuniary penalty or confiscation, which has not been paid, or for which no guarantee has been provided, and on the merits of the case or the circumstances of the suspect there is a reason to expect that they will avoid the responsibility by exiting the country and staying abroad;
- When the departure of the person concerned goes against rules in the law that have as an objective to ensure the presence of a person in the country, until they have fulfilled the obligations they have towards the public authorities or private persons; or,
- When there are grounds to presume that the person concerned has the intention to participate in activities abroad, where this can imply or increase a danger for the state security, other states' security or a considerable threat against the public order.³⁰

As already becomes clear from the preceding, the grounds for withdrawal in use in the countries surveyed may across the board be considered compatible with the substantive and procedural requirements imposed by Articles 27 and following of Directive 2004/38/EC (public policy, public security, public health, access to judicial remedies etc.). This does not mean that they have passed muster entirely without question – particularly the more recent possibility for revocation in case of suspected terrorist inclinations or affiliations. For example, in Denmark the relationship of this new ground for denial or withdrawal of a passport with the rule in Article 27 in the Directive has been closely examined at the time of its introduction, as such denial or withdrawal of a passport can hinder the free movement of Danish nationals to another Member State.³¹ However, the Ministry of Justice found that the considerations behind the new rules were in line with EU law considerations on public

²⁹ See <<http://www.premier.be/fr/lutte-contre-le-radicalisme-et-le-terrorisme-le-gouvernement-approuve-trois-projets-de-loi>>.

³⁰ This last ground for withdrawal has been introduced in 2015 in an effort to prevent that Danish nationals leave the country to reach conflict areas abroad (e.g. Syria or Iraq) for the purpose of participating in activities which will increase their capacity and/or will to commit serious criminal offences upon their return. For further details and an example of its application, see the country report on Denmark.

order and security. The measures are deemed proportional in that they do not go further than necessary to safeguard said considerations, involving a concrete evaluation in every case where a suspicion arises. Moreover, the rule foresees a number of exceptions and possibilities for issuing a provisional passport in the case of a specific travel purpose which is found admissible. Finally, the normal Danish administrative rules on consultation with the party involved, motivated decision, and guidance for complaints are also applicable in these cases. For these reasons the Ministry of Justice found that the new rule introduced for denial or withdrawal of passport was in line with EU law.³²

The application of the aforementioned grounds in practice has produced some litigation, yet no data was made available that suggests that the relevant EU standards are or have been violated. The sparse case law included in various national reports conveys the impression that public authorities remain within the required bandwidth. So far, no complaints against the withdrawal of a passport have been raised before the Commission or the European Court of Justice either (notwithstanding the latter's rich case law on the definition of public order, public security and public health).

3. Acquisition of travel documents by non-nationals

In all countries surveyed, a limited set of travel documents can be obtained at public offices by nationals of other Member States. For Belgium, this is e.g. the special ID issued to foreign diplomatic or consular agents, and identity certificates for children under 12 years old. In Hungary, they can obtain an emergency travel document when needed. In Denmark and The Netherlands, for those who cannot obtain a passport from their country of nationality (and can attest their attempt in this regard), the authorities will issue travel documents for refugees and/or an Aliens' passport, primarily to third country nationals. In Denmark, these documents can be obtained at the Danish Immigration Service (*Udlændingestyrelsen*), which is located in the Copenhagen capital city; applicants who live outside of the capital region can apply at the police stations in the country which are equipped to register biometric data. In Italy, nationals of other Member State may obtain an ID card if they are resident in a given Italian municipality.

In Italy and The Netherlands, there are no general differences with regard to the applicable procedure, nor to costs, as far as EU citizen are concerned. The same goes for Belgium, although the timeframe is somewhat longer. In Denmark the prices is not different, but the timeframe for delivery of the special types of passport mentioned above is 10 weeks – hence five times longer than for a Danish passport. If the applicant is also applying for renewal of residence permit or for a permanent residence permit, the timeframe for delivery will be even longer. In case of renewal of travel documents and Aliens' passport however, the timeframe is reduced

³¹ See the comments to Bill LSF 99 2014/1 in the *Almindelige Bemærkninger*, at 10.

³² *Ibid.*

to 10 days or immediate renewal if the applicant meets in person at the Danish Immigration Service (though this will be valid only in simple cases where there is no need to further investigate the application).

Information on the acquisition of the relevant travel documents adequately is perhaps not made available as broadly as possible. The Hungarian KEKKH website features a sub-page dedicated to personal documents issuance, where information on passports and ID cards is made available in English.³³ The Dutch system has limited itself to English as well. In Denmark, the information on passports to foreign nationals is provided in Danish and English on the Immigration Service's website, while the application is provided exclusively in Danish in the paper version, and in a Danish/English version for online applications.³⁴ In Italy, while most institutional websites are translated in English, and in certain cases also in French, German and Spanish, the national rapporteur underlines that the accessibility of all relevant information in at least the main EU languages is still in need of strong improvement. Most institutional websites of Belgium provide the information in the three main languages of the country, i.e. Dutch, French and German. Some of these also contain the information in English, but it is invariably much more limited than that in the other languages.³⁵ In this country report, it is underscored as well that the relevant information ought to be made available in all main EU languages, as for EU citizens it proves difficult to cope with the languages problems / barriers when addressing queries to local and regional authorities.

4. Policy for extension and renewal in consular representations in other Member States

It was next explored whether the Member States concerned adhere to a uniform general policy with regard to the extension or renewal of travel documents at its consular representations abroad, or whether the conditions and procedures applied differ per country. As a starting point, it was noted in all of the reports that the status of the foreign missions is the same, as are the applicable laws and procedures. Nevertheless, in most reports some obvious procedural deviations were noted as well, pertaining to timeframe (generally longer), the costs (generally higher), and the materials that need to be produced (especially in case of a newborn child, e.g. by demanding additional paperwork clarifying the status of the other parent). Moreover, if it concerns an application for a minor child that is are foreign-born, the original birth certificate has to be produced, which in

³³ See <<http://kekkh.gov.hu/en>>. The website of the BMBÁH is fully available in Hungarian, English and German, and provides information on related proceedings as well: see <<http://bmbah.hu/index.php>>.

³⁴ See <http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/passport_application.htm>, and <<http://www.nyidanmark.dk/da-dk/Blanketter/SearchForms.htm?SearchType=forms&Subject=Pas-%20til%20udl%C3%A6ndinge&PerformSearch=True>>.

³⁵ Depending on where the information comes from, notable differences in the information accessible in French or Dutch can be observed. For example if the information comes from an institutional website of the Dutch speaking community, the main information will be accessible in Dutch, and a brief translation is made in French. The other way round, if the information is provided by an institutional website of the French speaking community, all the information is provided in French, and a more succinct translation is made in Dutch.

Italy and Hungary must also be accompanied by an official translation. Other specificities concerned e.g. for The Netherlands the fact that a Dutch ID card can only be obtained at consular representations in those countries where it is a valid proof of identity.

Particularly salient difficulties were flagged in response to this question in the national report on Denmark. It emerges that in practice, since 2012 it has become more difficult for Danes living abroad to obtain a new passport, as the new biometric requirements entail that the consulates abroad have to be in possession of special technical equipment for the registration of the biometric data. Only the diplomatic representations equipped with the new technology (to take digital pictures, fingerprints, and signatures) which also have access to the Central Person Registry and the Central Passport Registry have been able to accept applications for passports that meet the new standards. Consequently, in some countries the Ministry of Foreign Affairs of Denmark has had only one embassy/location able to issue the new type of passport (e.g. only the Paris Embassy in France, recently adding Nice, and only the Dublin Embassy in Ireland), while in other Members States it refers to consulates or embassies in other countries close by (e.g. the Danish representation in Estonia and Lithuania refer to the Riga Embassy, the Warsaw Embassy, or the Helsingfors Embassy for all other passport except passports for children under 12 years of age, who are not required to include digital fingerprints in their travel documents).³⁶ In order to relieve the inconveniences deriving from having only few representations able to issue the biometric passports, Denmark introduced in some of its consular representations (both in and outside of the EU) so-called 'biometric suitcases'. Equipped with a biometric suitcase, a consular staff member with a mobile biometric kit visits selected Honorary Consulates in order to record biometric data of applicants for Danish passports on a periodic basis. However, the Ministry of Foreign Affairs of Denmark informs that it is still easier, faster and cheaper for Danes to apply for a new passport when they are on a visit in Denmark, for any municipality can process the application, even if the Danish national is not living in Denmark.³⁷ Moreover, in case of short stays, it is possible to have the new passport sent afterwards to a consulate abroad against the payment of a fee. On the whole though, the latter comes across as a relatively weak form of compensation for the real hardships encountered by mobile EU citizens holding Danish nationality.

On a related note, the Dutch report makes mention of the controversial decision of the Dutch government that, for financial reasons (as the costs of producing a travel document had risen, inter alia due to the inclusion of the chip containing biometric characteristics), the possibility to obtain travel documents was to be limited to those honorary consulates that would receive at least 500 applications for passports on a yearly basis. As a

³⁶ The Embassy of Denmark in Portugal cannot issue passports either.

³⁷ For example as informed on the website of the Ministry of Foreign Affairs of Denmark in France, see <<http://frankrig.um.dk/da/rejse-og-ophold/borgerservice/pasudstedelse/>>.

result, many consular representations would no longer provide for travel documents. This decision was criticised in a report of the Dutch National Ombudsman.³⁸ It indicated that the decision could exert a disastrous impact on the costs associated with the simple renewal of a travel document, illustration this with the example of a Dutch national residing in Brazil, who now had to travel 4400km to the embassy in capital Brasilia, while there was a honorary consulate merely 140km from his residence. Another example was that of a family living in Trondheim, Norway, who now had to travel 2400km to Oslo in order to renew their travel documents, as the honorary consulate does not meet the criteria. In response, the Minister of Foreign Affairs acknowledged the need to expand the possibilities for obtaining or renewing travel documents by nationals residing abroad.³⁹ As a result, the number of so-called border municipalities (*grensgemeenten*) was increased. Nationals residing abroad can nowadays approach these municipalities for obtaining travel documents. The most notable example here is the border municipality of Haarlemmermeer, having an office at Schiphol airport.⁴⁰ Nationals living abroad can schedule an appointment online, after which they can travel to Schiphol in order to obtain their travel document. While the Ombudsman seems positive with regard to the functioning of these border municipalities in regards of processing time, the question remains whether or not these truly absolve the extra burden caused by the travel and accommodation costs, related to the acquisition of travel document for nationals living abroad. After all, Dutch expats still have to travel to the Netherlands in order to renew their passport.

5. Acquisition for newborn children of non-nationals at domestic public offices

In all Member States surveyed, parents of a newborn child with a foreign nationality are unable to acquire travel documents for a newborn child at domestic public offices, and are to turn to the representative offices of their own country. The issuance of a passport or ID by the country of nationality will normally require the production of the birth certificate of the foreign child born in the Member State of residence, issued by the national authorities. The issuance of this birth certificate, necessary to proceed with the application for an ID card or passport to the authorities of the state of nationality, may however take some time (in Hungary extending to a few weeks, in particular when the child is not (also) a Hungarian citizen). Such delays may obviously hinder the child's and her parents' ability to travel for a few months after the birth of the child. The foregoing finds exception if the child possesses, or is poised to obtain, the nationality of the state of residence: the procedure, costs and timeframe are then identical to what applies for parents holding the nationality of the Member State concerned. Other documents that can under specific circumstances be obtained at national public offices are e.g. the alien's passport that may be obtained by children of recognised refugees, and the identity certificate for foreign children under 12 that may e.g. be procured from Belgian local authorities.

³⁸ Available at <https://www.nationaleombudsman.nl/uploads/rapport2010-191_1.pdf>.

³⁹ Ibid.

⁴⁰ See <<https://haarlemmermeergemeente.nl/taak/gemeentebalie-schiphol>>.

Minors need to be in possession of an individual travel document in order to travel within, as well as outside, the European Union. This document can be either an identity card (considered as a valid travel document within the Schengen area) or a passport for non-EU countries. The issue of travel documents for minors requires the written consent of both parents. In most of the countries surveyed, it is however not necessary for minors travelling alone, travelling with adults who are not their legal guardian to produce any extra (official) documents, signed by their parents or legal guardian(s), authorising them to travel.⁴¹ At the same time, that practice is recommended by the Ministry of Foreign Affairs of some countries, e.g. Belgium, Italy and Denmark.

The Dutch Ministry of Defence requires a 'consent letter for minors traveling abroad' signed by the parents or the legal custodian, when a person who is not his or her parent, legal custodian or otherwise possesses parental authority accompanies the child.⁴² According to the Dutch Royal Military Police, this form and additional documents should also be provided in case a minor is travelling unaccompanied. Furthermore, the Military Police may ask a single parent or legal custodian travelling with a child to provide the following documents: the latter's return ticket, a recent extract from the child custody register; a recent authenticated copy from the civil registry of the municipality where the child resides; a copy of the personal details page of the passport of the consenting parent; if applicable, a statement regarding child custody and visiting rights, the parenting plan, and if possible the child's birth certificate.⁴³

⁴¹ The same holds for minors travelling with only one parent, who are not required to produce any extra (official) documents signed by the other parent or legal guardian authorising them to travel.

⁴² See <<https://www.defensie.nl/binaries/defensie/documenten/formulieren/2015/07/27/consent-letter-for-minors-travelling-abroad-english/consent-letter-for-children-travelling-abroad-version-11-2015.pdf>>.

⁴³ See <<https://www.defensie.nl/english/topics/travel-documents/contents/travelling-with-children>>.

IV. INCLUSION OF BIOMETRIC DATA AND ITS EFFECTS

1. Inclusion of biometric data

Council Regulation 2252/2004/EC requires Member States to collect and store biometric data, including fingerprints, in the storage medium of passports and other travel documents, and also requires that such data be used for verifying the authenticity of the document or the identity of the holder. Further measures may be introduced with regard to the processing and use of such data, or requiring the inclusion of additional biometric data going beyond the scope of the Regulation. The adoption of the domestic rules concerned may have given rise to controversies, and they could potentially have had a 'chilling effect' on the acquisition of travel documents. This was believed to warrant further inquiry, also e.g. with regard to possibly instigated judicial or non-judicial procedures attempting to curb the discretionary powers exercised by the Member State legislature, and/or targeting the underlying EU instrument.

None of the countries surveyed already introduced measures requiring the collection and retention of the fingerprint data for use in connection with travel documents *before* the adoption of Regulation 2252/2004. Plans were discussed in The Netherlands as early as 1997, but came to naught. In Hungary, the use of fingerprints for travel documents was not just unknown prior to the Regulation; fingerprints themselves were also scarcely used for identification. Remarkably, Belgium was one of the first to start issuing electronic passports (since 2004), but one of the last to introduce biometric data in its travel documents for Belgian nationals (i.e. passports).

In several Member States, specific warnings, objections and protests were lodged against the inclusion of biometric features in passports and travel documents. For example, the Belgian Commission on Protection of the Private Life repeatedly stressed that the collection of biometrical data had to be subjected to the Belgian Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data.⁴⁴ It hereby urged that the storage of the data must be done in absolutely secure fashion and for a reasonable time, in light of the purpose for which the data were collected and stored. It moreover demanded that every institution processing biometrical data report this to the Commission.⁴⁵ In its advice no. 01/2016 *on the draft Royal Decree amending the Royal Decree of 10 December 1996 concerning different identity documents for*

⁴⁴ Loi du 8 Décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel / Wet tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens, *Moniteur Belge / Belgisch Staatsblad* 18 March 1993.

⁴⁵ See <<https://www.privacycommission.be/fr/biometrie>>. See also *Avis no. 17/2008 relative aux traitements de données biométriques dans le cadre de l'authentification de personnes (A/2008/017)*, available at <https://www.privacycommission.be/sites/privacycommission/files/documents/avis_17_2008_1.pdf>.

children under 12 years,⁴⁶ it stressed that biometric data can only be used for the sole and exclusive purpose of verifying the authenticity of the residence document and the identity of its holder,⁴⁷ and thus should be separated from other national data. It drew similar attention to the obligations contained in article 16 of the Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data in its Advice no. 60/2013 *requesting an opinion on the draft law on automated processing of personal data required for Belgian passports and travel documents*.⁴⁸

In The Netherlands, the objections of various citizens, scholars, NGOs, advisory bodies and members of parliament to the initial way in which fingerprints were stored, form part of protracted story that deserves an extensive highlighting. The intended storage was introduced by the 2009 legislative amendment of the Passport Act.⁴⁹ In that amendment, the Dutch legislature had gone further than Regulation 2252/2004 required (or perhaps: allowed) by ordering the storing of all the biometric data of passports in a central database which was accessible online 24/7, not only for verification purposes, but also for criminal investigation purposes (including counter-terrorism), for a duration of eleven years. According to several Dutch NGOs and experts, this central fingerprint database would constitute a serious violation to the right to privacy. Before the adoption of this law by the Senate, the Dutch Data Protection Authority issued a report that criticised the amendment and notably the central database.⁵⁰ However, these initial protests proved futile, since the legislature saw no reason to change the legislative proposal. The central database was not yet in function directly after the passing of the legislative proposal, so meanwhile, the (four) fingerprints that the amended Passport Act required were stored in the decentralized data registries of each municipality. However, in the course of the years after 2009, the Dutch government did see reasons for a change in the way they had amended the Passport Act and the Implementing regulations. This may have a plethora of causes, such as the various judicial and non-judicial protests and proceedings by citizens, and the influential criticism of, for instance, the Dutch Scientific Council for Governmental Policy (WRR), which published in 2010 a report in which the biometric

⁴⁶ *Avis no. 01/2016 du 13 Janvier 2016 sur le projet d'Arrêté royal modifiant l'arrêté royal du 10 décembre 1996 relatif aux différents documents d'identité pour les enfants de moins de 12 ans et l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* (CO-A-2015-058), available at <https://www.privacycommission.be/sites/privacycommission/files/documents/avis_01_2016.pdf>.

⁴⁷ In line with article 4 of the Council Regulation 1030/2002/EC of 13 June 2002 laying down a uniform format for the resident permits for third-country nationals. Official Journal of the European Communities L-157/1 of 15.06.2002.

⁴⁸ *Avis n.º 60/2013 du 27 Novembre 2013, demande d'avis concernant l'avant-projet de loi relative aux traitements automatisés de données à caractère personnel nécessaires aux passeports et titres de voyage belges*. The full text of the Advice/opinion is available at <[https://www.privacycommission.be/fr/search/site/biom%C3%A9trique?f\[0\]=ds_created%3A%5B2014-01-01T00%3A00%3A00Z%20TO%202015-01-01T00%3A00%3A00Z%5D](https://www.privacycommission.be/fr/search/site/biom%C3%A9trique?f[0]=ds_created%3A%5B2014-01-01T00%3A00%3A00Z%20TO%202015-01-01T00%3A00%3A00Z%5D)>.

⁴⁹ *Stb.* 2009, 252, as available at <<https://zoek.officielebekendmakingen.nl/stb-2009-252.html>>.

⁵⁰ See <<https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/adv/z2007-00010.pdf>>.

passport was heavily criticised.⁵¹ According to the WRR, there had been insufficient regard for the right to privacy, the lack of security in the proposed central database, and the risk of function creep when it came to access to the central database. Moreover, the report criticized the lack of transparency and proper parliamentary discussion in the legislative process, presenting citizens with the legislative amendments in 2009 as a near *fait accompli*, which resulted in the various protest mentioned above. Furthermore, the legislative procedure as well as the executive follow-up of the amendments lacked transparency and accountability, and the WRR noted that there was insufficient proof that look-a-like fraud, the combating or preventing of which constituted the initial aim of the biometric passport, actually happened on a sufficiently frequent scale. After the publication of the WRR report, several members of parliament asked the minister in charge critical questions. During the same legislative debates, the Minister of The Interior and Kingdom Relations sent a letter to parliament concerning the storage of biometric data in the central database. He concluded that there had been insufficient developments in technology to achieve the aim of a reliable verification/identification of the passport holder, and that there were a high percentage of faulty identifications. He therefore expressed his intention to put the central database on hold (the central database had not been functioning yet). In a further letter to the parliament, the Minister expressed his intention to amend the Passport Implementing Regulations in such a way that the duration of storage would be limited to the period between the application for the travel document and the actual delivery of it, and that the additional two fingerprints should no longer be required. During the process of the most recent amendment of the Passport Act, in 2012, the Dutch Data Protection Authority was again consulted on the new amendment of the Passport Act (formally adopted in December 2013), and this time, the storage of fingerprints in the central database for a period of time beyond the issue of the travel documents in question, was abandoned. However, the Data Protection Authority was critical of the extension of the period of validity of passports from five to ten years, since it was unclear whether the technological safety of the chip could be guaranteed for such a long period. In June 2012, the parliament adopted a motion to urge the government to put the issue of fingerprints on the agenda in the EU, hoping that the requirement as provided for by Regulation 2252/2004, could be abandoned, since the effectiveness of the taking of fingerprints for verification and identification purposes was questionable. The Minister of the Interior and Kingdom Relations reported back in April 2014 that his consultations with other Member States had been unfruitful. In August 2014, the parliament urged the Minister again to attempt to place the issue of fingerprints on the EU agenda, since the European Parliament had been renewed after the most recent elections. While the Minister promised committed himself to trying again, but believed his chances to be low.⁵²

⁵¹ WRR, "*Happy Landings? Het biometrische paspoort als zwarte doos*", available at: http://www.wrr.nl/fileadmin/nl/publicaties/PDF-webpublicaties/Happy_Landings_.pdf.

⁵² All relevant sources may be consulted from the Dutch report (answer to Question 12), as annexed.

At the time of the hearing of the new passport order in the Danish Parliament, introducing the requirement of the collection of digital fingerprints, the Danish Institute for Human Rights⁵³ and the Danish Data Protection Agency⁵⁴ pointed out that it would have been desirable to carry out a Privacy Impact Assessment (PIA analysis), in order to ensure that, even with the taking of the biometric features, the citizens' right to privacy and personal data would still be protected. The Danish Data Protection Agency also warned about the need to establish effective security measures for the protection of the collected data (the system later indeed proved not to be infallible in this regard), and also about the possibility of handling the information on fingerprints separated from other personal information, which could easily identify the applicant.⁵⁵

In Hungary, severe criticism was expressed by the Data Protection Commissioner in his 2004 Parliamentary Report. He harked back to findings from a previously installed working group, which had expressed worries because of the possible inclusion of biometric identifiers, and used empirical evidence to demonstrate that the procedures do not ensure the necessary safety or ease for mobile persons, because their admission or denial of the owner of the passport sometimes happens without any ground. In addition to being ineffective, the fingerprints were also criticized for enabling the "one and multiple" identification of persons, whereas the decision-making process was deemed not transparent and legitimate enough.⁵⁶ In 2005, the Commissioner voiced his concerns in his own position paper 1485/J/2005, criticising the Hungarian timeline for the adoption of the Regulation, the possible privatisation of the state registry of biometric data, as well as the approach which regards biometric identifiers as "ace weapons" in the war on terror. He further noted that featuring biometric elements in travel documents and ID cards "results in great risks, raises numerous ethical, legal and technical questions", and that a societal debate should be presented, that a distinction ought to be made between biometric data collected and stored for a public purpose, and those for a contractual purpose (on someone's own authorisation), and that the use of biometric data must be clearly restricted.⁵⁷ The 2007 Report includes a short description of how biometric data are collected and stored in Hungary, although at that point the Commissioner raised no objections anymore.⁵⁸ In 2008, he was asked to give his opinion on the envisaged amendment of the Act on Travelling Abroad. He found that it would not lead to human rights abuses for minors, though he underlined that no data may be entered into the database via which family relations might be traced. This suggestion was accepted.⁵⁹ Besides the criticism and concerns voiced by the Commissioner, the Hungarian Civil Liberties Union (HCLU), one of the most significant human rights NGOs in Hungary, has written

⁵³ Institut for Menneskerettigheder, *Høring over udkast til bekendtgørelse om ændring af bekendtgørelse om pas m.v.*, 14.11.2011.

⁵⁴ Retsudvalget 2010-11, L 202 Bilag 1, Datatilsynet, *Vedrørende høring over ændring af pasloven*, 25.03.2011.

⁵⁵ Ibid.

⁵⁶ See <<http://www.parlament.hu/irom37/14721/14721.pdf>>, pp. 180-181.

⁵⁷ See <<http://www.parlament.hu/irom37/19341/19341.pdf>>, p. 16, pp. 179-180.

⁵⁸ See <<http://www.parlament.hu/irom38/05014/05014.pdf>>, pp. 235-236.

⁵⁹ See <<http://www.parlament.hu/irom38/08959/08959.pdf>>, p. 166.

a protesting open letter to the government. It argued that the new Regulation would be “unnecessary” and “precipitous”, as well as dangerous to the private sphere of citizens. It also contended that in the proposed form, it is of no use to the “war on terror”, and that it seriously restricts fundamental rights, generalizing identification via fingerprints. HCLU further criticised the legitimacy of the decision, pointing out that there was no public debate on this issue, and claimed that data protection and technical guarantees are lacking. The open letter was signed by four other major NGOs, such as the Eötvös Károly Public Policy Institute, the Hungarian Helsinki Committee. HCLU suggested that Hungarian people should also sign the open letter of the NGOs Privacy International, Statewatch and European Digital Rights.⁶⁰ These concerns had no measurable impact on the decision-making process. Upon introducing the Regulation, HCLU accused the government of approving the bill, despite it being incompatible with the (then) Constitution, and further argued that its consequences were not disclosed to the public, did not allow of a debate, and alleged that even the data protection officer was prevented from voicing his opinion.⁶¹ HCLU also commented on the background of the introduction of the biometric-data-filled passports.

In contrast, the Italian Data Protection Authority (IDPA) produced an advice on the decree on the electronic passport in 2009, considering that the innovations introduced did not raise specific problems in the protection of personal data. At the same time, it did suggest some changes in order to better comply with privacy rights as guaranteed under the Italian Data Protection Code, and to improve the level of their protection in the procedures needed to issue an electronic passport. As the suggestions of the IDPA have been completely adopted, the draft decree was considered to be in compliance with the statutory privacy protection rules.⁶²

In none of the countries surveyed were there any judicial objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities. The Netherlands formed the sole exception, where several individuals initiated claims after applying for a new passport or ID card, but refusing to give their fingerprints, or objecting to the digital rendering of their facial image. Their applications were rejected, sparking litigation before domestic administrative courts, and subsequent appeals to the Dutch Council of State, the highest administrative law court in the Netherlands. In September 2012, the Council deemed it necessary to refer preliminary questions to the ECJ.⁶³ The questions concerned, in short, whether Regulation 2252/2004 applies to national identity cards such as the Dutch identity card, whether Art. 1 (2) of Regulation 2252/2004 was valid

⁶⁰ See <https://www.privacyinternational.org/issues/terrorism/ep_letter_biometrics.html>. The open letter is unfortunately no longer available.

⁶¹ See <<http://tasz.hu/adatvedelem/biometrikus-utlevellet-vezetnek-be-magyarorszagon>>.

⁶² IDPA, advice of 22 November 2012, doc. web n.2222980, available at the IDPA website: <<http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/2222980>>.

⁶³ Registered as Joined cases C-446/12 to C-449/12 *Willems*, ECLI:EU:C:2015:238.

in the light of the right to privacy and protection of personal data, and, if it is valid, whether Art. 4(3) of Reg. 2252/2004 requires Member States to guarantee that the biometric data collected under the Regulation, may not be used for other purposes than the issue of travel documents.⁶⁴ Pending the case, the ECJ delivered its ruling in the *Schwarz* case,⁶⁵ prompting the Council to withdraw its question on the validity of Art. 1(2) of the Regulation. Meanwhile, in December 2013, the Passport Act was amended again in order to abandon the requirement of the taking of two extra fingerprints, and to limit the storage of the data to the period between the application for the travel document and the actual delivery of it. On 16 April 2015, the ECJ delivered its judgment in the *Willems* case.⁶⁶ The CJEU explained, firstly, that national identity cards, such as the Dutch identity card, do not fall within the scope of application of Regulation 2252/2004. Secondly, the CJEU ruled that only the uses of the biometric data as envisaged in Art. 4(3) of Regulation 2252/2004 fall within the scope of application of the Regulation. Consequently, the positive validity review in the light of Arts. 7 and 8 of the Charter of Fundamental Rights as performed by the ECJ in the *Schwarz* case only concerns the validity (and proportionality) of the uses in that specific context. Other uses of the biometric data fall within the exclusive competences of the Member States, and are subject to review by their domestic courts. The national procedure before the Council of State was resumed on 3 December 2015, and has not led to a final decision yet.

Apart from these administrative proceedings, a group of Dutch citizens and an NGO called 'Privacy First' also initiated civil proceedings, alleging the unlawfulness of the taking and storing of fingerprints in the aforementioned central database, and the wide possibilities for access to this database by other government agencies. The first instance court declared their claims inadmissible in 2010, arguing that their claims could only be lodged at an administrative court.⁶⁷ This judgment was quashed by the Appeals Court of The Hague which dismissed the claims on substance, but reviewed the merits of the case in more detail as part of its decision on the costs of the proceedings. The Appeals Court considered the storage of fingerprints in the central database an unsuitable means for the purpose of identification and verification, and therefore an unjustified restriction of the right to privacy. Since the creation of the central database had already been cancelled by the legislature, the Appeals Court only awarded the costs of the proceedings.⁶⁸ The government appealed this decision in a cassation procedure to the Dutch Supreme Court. On 22 April 2015, the Supreme Court annulled the decision

⁶⁴ Raad van State, 28 September 2012, ECLI:NL:RVS:2012:BX8647 (and BX8644, BX8646, BX8648 and BX8654), available at <<http://deelink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2012:BX8647>>.

⁶⁵ Case 291/12 *Michael Schwarz v Stadt Bochum*, ECLI:EU:C:2013:670

⁶⁶ Joined cases C-446/12 to C-449/12 *W.P. Willems tegen Burgemeester van Nuth, H. J. Kooistra tegen Burgemeester van Skarsterlân, M. Roest tegen Burgemeester van Amsterdam en L.J.A. van Luijk tegen Burgemeester van Den Haag*, ECLI:EU:C:2015:238.

⁶⁷ District Court of The Hague, decision of 11 August 2010 and 2 February 2011, ECLI:NL:RBSGR:2011:BP2860.

⁶⁸ Court of Appeal of The Hague, 18 February 2014, ECLI:NL:GHDHA:2014:412.

of the Hague Appeals Court, and adopted the same line of reasoning as the District Court: the appropriate *voie de recours* would have been an administrative procedure.

When asked to indicate whether citizens experience the inclusion of biometric data in passports and travel documents as a hindrance, and whether it in any way exerted a 'chilling effect' on the (rate of) applications for obtaining or renewing travel documents in the country concerned, all rapporteurs pointed to a lack of (reliable) data. In Hungary, the available statistics show that from the beginning of 2009 (up to 2015), the number of passport applications has been steadily receding.⁶⁹ At the same time, it is emphasised that there is no strong evidence supporting the inference that this trend can be attributed (solely) to the Regulation and its biometric requirements. For Denmark, it did not prove possible either to conclusively portray citizens' experiences. In 2005, 400.000-450.000 passports were issued,⁷⁰ while in 2010 the number was up to 700.000.⁷¹ In 2015, the Danish Ombudsman mentions in a decision that the municipalities handle about 600.000 applications for passports a year.⁷² Yet, these numbers are not considered proof either that no 'chilling effects' whatsoever occurred for those submitting applications for obtaining or renewing travel documents in Denmark.

Interestingly, through the report *The Future of Identity in the Information Society*, a team of scholars from Brussels that engaged in empirical investigations provides at least some insight in the prevailing sentiments amongst Belgians. Their conclusions reveal that actually two-thirds of those interviewed were in favour of the inclusion of biometrical data, mainly because they regard it an ideal way to combat fraud and identity theft.⁷³

2. Processing of biometric data

Across the various Member States, the collected fingerprint data for use in connection with travel documents is stored at different places. In Belgium, the Belgian Federal Public Service is made responsible for the retention of biometrical data (only the scanned image of the facial image⁷⁴). The data is however also transmitted to

⁶⁹ The figures are available on the website of KEKKH: <http://nyilvantarto.hu/hu/statisztikak>, as well as http://nyilvantarto.hu/archiv_honlap/.

⁷⁰ Preparatory Works, *Forslag til lov om ændring af færdselsloven og pasloven (Kommunernes varetagelse af visse opgaver på kørekort- og pasområdet som led i kommunalreformen)*, *Almindelige Bemærkninger*, at 3.1.

⁷¹ See <<http://politiken.dk/rejser/nyheder/sundhedogsygdom/ECE1121667/over-22000-danskere-glemmer-passet-hvert-aar/>>.

⁷² Decision 2015-28 of 20.05.2015, *Afslag på udstedelse af nyt pas savnede hjemmel og var i strid med reglerne om sagsoplysning og bevisbedømmelse* [Refusal to issue new passport lacked legal basis and was contrary to the rules on statement of facts and assessment of evidence].

⁷³ Report of 8 May 2009. The full text of the report is accessible at <<http://www.vub.ac.be/LSTS/pub/Dehert/346.pdf>>, p. 42.

⁷⁴ The fingerprints will not be kept unless a request from the applicant is made to this effect, and only the fingerprints of Belgian citizens abroad who have submitted their application at an embassy or consulate can be stored for a period of 7 or 5 years.

the Belgian Federal Interior Public Service for the 'Checkdoc' application.⁷⁵ The three type of data that will be transferred are that pertaining to the holder of the passport,⁷⁶ the data of the passport itself,⁷⁷ and the data of the production of the passport.⁷⁸ The duration of the retention is 20 years, after which all data is destroyed. In Hungary, the KEKKH (Central office for Administrative and Electronic Public Services) has been playing this role since 2007, and the adoption of Regulation 2252/2004/EC. In Italy, in compliance with Art. 11 of the Data Protection Code, biometrical data can be used only to verify the authenticity of the document and the identity of the bearer through comparative elements. Biometric data is therefore not kept in a database or register, but must be deleted immediately after the issuance of the document.⁷⁹ Yet, pursuant to Art. 7 of the Ministerial Decree of 2009, a passport database (*Banca dati dei passaporti*) has been created at the Ministry of Foreign Affairs, which is also the holder of the personal data. As mentioned above, the Dutch legislature initially intended to set up a central database, but backtracked from this in 2011, deciding that only two fingerprints would have to be stored in the decentralised database of the municipality where the application for the travel document is made, and only for the period between the application for the travel document and the actual delivery of it.⁸⁰ All other personal data, including the facial image, are stored for either 11 years if the travel document is valid for 5 years or less, and for 16 years if the travel document is valid for 5 years or more. Notably, the data included in the local databases is accessible for other purposes as well, such as consular services, criminal investigation, identification of victims, and most notably, by the Dutch general and military intelligence agencies.

The data collected in connection with an application for a Danish passport are registered in the Central Passport Registry (*Det Centrale Pasregister*), which collects information about persons with passports issued by the Danish authorities. The digital data are also handled in the Registry for Passport Production (*Registeret for Pasproduktion*), which contains information that is necessary for the production of passports, the production control, and the inventory control. It is the Danish National Police (*Rigspolitiet*) which handles the register and is the data controller.⁸¹ Access to the information in the Central Passport Register can be obtained by contacting the Danish National Police. The biometric data are however only collected in order to produce and

⁷⁵ An application that allows to verify whether Belgian identity documents, i.e., passports, ID cards or resident permits are valid or not (<<https://www.checkdoc.be/checkdoc>>).

⁷⁶ Name, surname, date and place of birth, sex, and signature, national register number, scanned image of facial image and nationality (except for foreign travel documents, stateless persons and refugees).

⁷⁷ Number, type, application procedure (normal or urgent), date and place of issuance, issuing authority and expiration date.

⁷⁸ Place of production, place of deposit, the date of receipt and serial number, any refusal of the application, production status, with date, the demand deposit administration, the date of sending the documents to the authority, the tracking number and the status of the chip.

⁷⁹ See Art. 2 of the Ministerial Decree of 2010 (in Italian: D.M. 23 marzo 2010, *Disposizioni in materia di libretti di passaporto ordinario* (Decreto n. 303/13). See also the abovementioned advice of the IDPA of 2012.

⁸⁰ There does exist a central database in which the requests for refusal, expiration and withdrawal are retained.

make the passports safer as regards falsification – in line with the Act on Processing of Personal Data, which states that the information collected may only be used for the purpose they have been taken for.⁸² They are only retained until the passport is produced, stored in the chip, delivered to the applicant, and then deleted. The fingerprints cannot be used for other purposes. Other types of information (e.g. the holder’s national ID number and the passport numbers) can be stored in the Passport Registry, and can be accessed by other authorities, e.g. municipal authorities to control if there is any annotation in the passport registry that speaks against issuing a new passport to an applicant.⁸³ After a sensitive hacking incident in 2015, the Danish Data Protection Agency has scolded the Danish National Police for not adequately performing its duty as controller pursuant to the Danish Act on Processing of Personal Data, section 41(3) on security of processing.⁸⁴ Thus, at least in Denmark, the new biometric requirements have triggered a series of new concerns for citizens’ data privacy.

In The Netherlands, severe public resistance arose against the option of using the data stored at the decentralised level for the other purposes indicated above – especially the initial version of the plan, in which a central database was introduced and in which the four fingerprints would be stored for 11 years. While the current system is a milder version of the initial scheme, it nevertheless continues to draw criticism. Members of Parliament have for example asked critical questions about the safety of storing the biometric data with a commercial company (Morpho), and not keeping it entirely in government control. The response from the Minister was that there are sufficient safety checks in place.⁸⁵ In the Member States surveyed, there has otherwise not been much (public) resistance to the central processing of data there. Reference may only be had to the objection from the then data protection commissioner in Hungary, Attila Péterfalvi. He criticised the draft of GD No. 276 of 2006, which purported to classify the travel documents registry as part of the personal data and home address registry, alongside the criminal record registry, and the Hungarian Card registry. The Commissioner claimed that the disposition is “unacceptable” to mingle personal data processing on different

⁸¹ Preparatory works to Bill L 202 2010-11, *Bemærkninger til lovforslaget* at 2.

⁸² Act on Processing of Personal Data (Act No. 429 of 31 May 2000), section 5. See in this regard B. Kofod Olsen (2004), *Passet og (U)Sikkerheden. Om Biometri og Integritetsbeskyttelse*, in J. Gulddal and M. Mortensen (eds.) *Pas – Identitet, Kultur og Grænser*, Informations Forlag, p. 152.

⁸³ Passport Executive Order, section 12.

⁸⁴ Which states that “The controller shall implement appropriate technical and organizational security measures to protect data against accidental or unlawful destruction, loss or alteration and against unauthorized disclosure, abuse or other processing in violation of the provisions laid down in this Act. The same shall apply to processors.” The decision (in Danish) is available at <<http://www.datatilsynet.dk/afgoerelser/seneste-afgoerelser/artikel/vedroerende-uedkommendes-adgang-til-personoplysninger-rigspolitiets-jnr-2013-079-76/>>.

⁸⁵ <https://zoek.officielebekendmakingen.nl/ah-tk-20092010-2067.html>

legal bases, either in the law itself, or through the operations of KEKKH.⁸⁶ The law, as it eventually entered in effect, duly differentiates between these categories, having addressed the concerns of the Commissioner.

⁸⁶ See <http://abi.atlatszo.hu/index201.php?menu=allasfogl2006&dok=2004_J_2006-2>.

V. ACTUAL OR POTENTIAL OBSTACLES FOR EU CITIZENS

1. Hindrances pertaining to the venues and costs for 'own' nationals

As known, differences between legal systems of the various Member States can actually or potentially create particular obstacles for static and mobile EU citizens alike. To an extent, these can be of a predominantly practical or technical nature. At the same time, these may flow from policy practices with regard to selective recognition of travel documents, sanctions imposed in case of non-compliance, denial of consular protection, or the treatment of travelling (accompanied or unaccompanied) minors. In addition to varying from country to country, the relevant conditions and procedures may change without prior notice.

Such hindrances may first of all be experienced by own nationals, and pertain to the accessibility of the venues and the related costs for obtaining travel documents – both when residing in their original Member State and when residing abroad. It would seem that Dutch, Belgians, Danish, and Italians especially experience those in the latter case, depending of the country and city where they have moved to, mainly because of the location of their national embassies and consulates (which sometimes can be very far from their place of residence). As noted, both Dutch and Danish nationals living abroad suffer particular hardships in this respect due to the limited availability of representations where a biometric passport can be obtained. This is compensated only to an extent by the possibility to apply for a biometric passport in any municipality in Denmark or the 'Schiphol solution' in The Netherlands, where they will not be confronted with a specific residence requirement.

'Static' EU citizens appear to experience most difficulties in Italy, due to the need to access different venues, and the time this consumes. Persons need to report to the police for the fingerprinting, and until recently also had to return there for the delivery of the passport. Another aspect which can make the issuance of travel documents more difficult as to venue and cost (especially of passports that may be urgently needed for travel outside the EU) is the need to apply to the office of the municipality of residence. Persons that have their domicile in another city must therefore either return to their municipality of residence or apply to the office of the place where they have the domicile, but in this case they need to await the authorisation by the competent office of the municipality of residence. It has newly become possible for applications to be made at the post offices and complete the payment there, with the passport being sent to the applicant. This service comes at an extra price of EUR 20 however, and the applicant remains obliged to turn to the police (*Questura, Commissariato di Pubblica sicurezza, or Carabinieri*) for the fingerprinting. Even more recently, a completely free service has been introduced for online applications, "*Agenda Passaporto*", which allows applicants to apply via web by registering on the website of the state police and complete an online form.⁸⁷ This system

⁸⁷ See further <<https://www.passaportonline.poliziadistato.it/>>.

simplifies the procedure further, although it only gives the opportunity to choose place, day and time for the submission of the documentation, and for fingerprinting at the competent offices.

While no such hindrances appear present for 'static' Hungarian nationals, nevertheless, sentiments and distrust against bureaucracy persist. Aware of these, the Public Administration and Public Services Development Strategy 2014-2020 has selected the lessening and digitalisation of bureaucracy as a highly significant goal. Since passports can be applied for at any district office, the Strategy prides itself on the proliferation of such district offices, allowing the citizens to lodge an application in 197 places, which augments to 2380 out of a total of 3154 municipalities if one also counts special offices and authorized personnel helping them.⁸⁸

As already flagged, there are notable differences in the costs to be incurred between 'static' and 'mobile' EU citizens. In fact, in some Member States even static EU citizens may experience such difference, e.g. in Belgium and the Netherlands, the main reason being the local taxes that the municipalities can impose on top of the fixed price established at the central level. 'Mobile' EU citizens generally pay higher fees at consulates and embassies abroad, pursuant to a fixed price established by the Member State of origin. This is however nowhere reported to pose an insurmountable obstacle. In Denmark, as already noted, the costs are relatively the highest in all situations, yet considered tolerable nevertheless. The recent increase related to the inclusion of biometric data (fingerprints) was deemed acceptable by the organisations that were heard at the time of the passing of the official bill.⁸⁹

2. Hindrances pertaining to the venues and costs for visiting / resident EU citizens

For a complete view of (potential) hindrances experienced by visiting EU citizens, the rapporteurs were first asked to identify the three largest groups of non-national EU citizens that annually visit the country (i.e. short-term residents in the sense of Directive 2004/38/EC, stay < 3 months). For Belgium, this turned out to be visitors from the Netherlands, France and the United Kingdom; for the Netherlands, visitors from Poland, Germany and Belgium; for Italy, visitors from Germany, France and the United Kingdom; for Denmark, visitors from Germany, Sweden and The Netherlands; and for Hungary, visitors from Austria, Romania and Slovakia. Subsequently, the question was posed whether the results are different when regarding the three largest groups of non-national EU citizens present in the country for a more extended duration (i.e. long-term residents in the sense of Directive 2004/38EC, stay > 3 months). For Belgium, this turned out to be citizens of Italy, France and The Netherlands; for the Netherlands, again the citizens of Germany, Poland and Belgium; for

⁸⁸ See <http://www.kormany.hu/download/8/42/40000/K%C3%B6zigazgat%C3%A1s_feljeszt%C3%A9si_strat%C3%A9gia_.pdf>, p. 41

⁸⁹ *Kommenteret Høringsoversigt vedrørende Udkast til lov om ændring af lov om pas til danske statsborgere m.v. og udlændingeloven (Fingeraftryk i passet m.v.)* (L 202), 28. April 2011.

Italy, citizens of Romania, Poland and Bulgaria; for Denmark, citizens of Poland, Germany and Sweden;⁹⁰ and for Hungary, citizens of Romania, Germany and Slovakia.

In Belgium, these groups of mobile EU citizens are reported not to experience problems in addressing the authorities responsible for issuing the travel documents, as the service is centralised in the municipalities for almost every action involving the acquisition of the relevant documents (the foreigners' e-card). However, one of the main problems resides in the linguistic barriers that might be encountered, as Belgium is divided into 3 Language Communities linked to the language (French, Dutch and German). Consequently, depending on the municipality approached, the working language as well as that of the travel documents issued, will be either French, Dutch or German.⁹¹ Moreover, mobile EU citizens may experience a difference in the costs for obtaining the documents concerned depending on their location, in light of the discretion municipalities enjoy to charge an extra local tax to the fixed price established at the federal level – though this plight is identical to that of Belgian citizens. As indicated earlier, the timeframe for the issuance of EU citizens is also unhelpfully longer for mobile EU citizens than for Belgian citizens, estimated to lie between 3 and 6 months.

In Italy, the aforementioned groups of mobile EU citizens do not experience specific hindrances regarding the accessibility of the venues where travel documents can be obtained or renewed. Indeed, the conditions to access are the same, and the differences in procedures are mainly linked to further documents or administrative fulfilments that may be requested in some cases (in compliance with EU law); the same applies to newborn (EU) children. According to Article 9 of Legislative Decree no. 30 of 2007 transposing Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member-States, for the registration and the release of the registration's certificate and of the identity document, the same provisions laid down for Italian citizens will apply to EU citizens. Specifically as regards the availability of consular delegations for the aforementioned groups of citizens, a main hindrance is derived from the fact that they are located only in few big Italian cities. Non-nationals not resident in one of these cities therefore need to travel through Italy in order to obtain or renew their travel documents.

⁹⁰ Though it was noted that the Immigration Service's annual statistical overview from 2014 indicates that Romanians, Polish and German nationals are the three largest groups which have obtained EU residence cards that year. The rapporteur of UCPH informs that Swedish nationals perhaps tend to 'disappear' from the radar, since by virtue of Nordic cooperation policies, they are not required to register for an EU residence card.

⁹¹ It must be noted though that the civil servants in the municipalities are obliged to speak another language of the country. As their knowledge of English is ordinarily also acceptable, addressing them does not prove excessively difficult in practice. Of course, it does remain necessary for the foreigner to have mastered at least in one of these languages.

In Hungary, Austria operates five consular offices in addition to her embassy in Budapest, and Germany maintains a consulate in Pécs. Romania operates two Consulates General (Gyula, Szeged) in Hungary, in addition to the one at the embassy in Budapest, whereas Slovakia operates one in Békéscsaba in addition to the one embassy in Budapest. For the mobile EU citizens concerned, according to the national rapporteur, these are considered sufficiently accessible, therefore pre-empting a need for extensive travels elsewhere. No particular hindrances were experienced in the country by these particular groups of mobile EU citizens with regard to the timeframe associated with the application for and acquisition of travel documents either; conversations with representatives of the consular offices revealed however that this usually takes between 4-6 weeks, depending on the availability of services in the home country.⁹²

As regards the experiences of Romanians living in Denmark, on the basis of the data gathered, the national rapporteur believes it possible to infer that it is a lot faster to obtain a travel document (passport or national ID card) by travelling back to Romania, instead of obtaining it at the embassy. The only place in Denmark where it is possible to apply for a passport is the Copenhagen embassy, and the applicants have to be present personally when submitting the request; delegation is not allowed. This poses a logistical problem for the many Romanians living outside of Copenhagen, e.g. in the Jutland peninsula. Moreover, it might take up to 4 months for a passport to be issued through the embassy, while it takes only 10 days (the mandatory time limit for issuance) for a passport to be issued at the competent police station in Romania.⁹³ Also, the embassy tax for a new passport is DKK 745 (EUR 100), while the local police tax in Romania is RON 292 (EUR 65).⁹⁴ When attempting to obtaining a passport for a new-born child, unless an applicant has a final court decision that entrusts the minor to only one of the parents, both parents have to be present at the embassy to request it, or they need to have a power of attorney from the parents who is not present. The specific information required in case of a minor born in Denmark is insufficiently transparent, which in itself it believed to constitute a hindrance. In contrast, no comparable or other significant problems are reported to be experienced by German citizens. The same holds for Swedish visitors, yet the situation is entirely different for long-term residents in the sense of Directive 2004/38. To begin with, the moment a Swedish citizen is officially registered in Denmark, the Danish authorities communicate this to the Swedish authorities, who in turn proceed to 'de-register' the citizen in Sweden. The latter entails some administrative hurdles when Swedish nationals have to renew their passports or ID card. With regard to the accessibility of the venues where travel documents can be obtained or

⁹² A researcher involved in WP7 holding French nationality related informally of her own difficulties in gaining access to travel documents for a newborn child, due to the need to access a French consular office abroad, as the services was no longer offered in Hungary. See also part VI below.

⁹³ One of the reasons is that the passport request and documentation is sent to Romania, where the passports are issued, and then shipped back to Denmark.

⁹⁴ The rapporteur adds that, given the fact that an airplane return ticket from Denmark to Romania, if bought well in advance can cost around 45 EUR, the extra 35 EUR to pay in order to get a passport when living abroad can seem to pose an unreasonable burden.

renewed, a substantial hindrance arises because of the Swedish embassy in Copenhagen has stopped providing the service of passport renewal. Consequently, Swedish citizens now have to travel to Sweden, and there contact a Swedish police station in order to get a new passport. It is also possible to have the police in Malmö to send the passport to the embassy and thus be able to collect it in Copenhagen, but for this an administrative fee is levied. Moreover, with regard to the timeframe associated with the application for and acquisition of travel documents, it takes longer for the Swedish police them to issue the passport when a citizen is not registered as a resident in Sweden anymore, as they have to verify the information against the information that Danish authorities have. There are also discrepancies in the travel documents recognised as valid ID in Sweden, as compared to the travel documents that are recognised in Denmark. In Sweden, it is possible to obtain an ID card, which is issued not on nationality basis but on residence. The Swedish ID card is recognised as a travel document within the Schengen area. However, it is not possible for Swedish citizens to get an ID card when they move to Denmark, if they so wished, as their not being resident in Denmark renders them ineligible for a Swedish ID card. These divergences constitute genuine obstacles for mobile EU citizens.

3. Discrepancies in the recognition of travel documents for identification purposes

Additional difficulties could arise from discrepancies between the travel documents recognised as valid ID in the home country of the three largest groups of non-national EU citizens that annually visit the country, as compared to the travel documents that are recognised in the Member State in question. It emerges that all aforementioned groups of mobile EU citizens visiting Belgium (Dutch, French, British, Italians) may potentially run into trouble as driver's license is not accepted as a valid means of identification there, while it is accepted as such in their home country.⁹⁵ Conversely, that risk is in Denmark only present for Dutch, as for Swedish, German and Romanians a passport and ID card is accepted in their home countries, while the Danish authorities readily accept the latter (despite Denmark not issuing national identity cards to Danish nationals itself).⁹⁶ Similarly, in Italy, according to Article 9 of Legislative Decree no. 30 of 2007 transposing Directive 2004/38, for the registration and the release of the registration's certificate and of the identity document, the same provisions laid down for Italian citizens apply to EU citizens. The identity of a Hungarian citizen can be verified with a valid ID card, as well as a valid passport or card-format driving licence. Austria recognises, for example, passports, identity card and the driving licence. In Germany, a valid ID card as well as a passport can be used for the same purpose. Romania recognizes personal identity cards, passports, the driving licence and

⁹⁵ In case an EU citizen does not possess the required document, in compliance with the case law of the ECJ, the persons concerned are allowed all reasonable means to enable the EU citizen to obtain or acquire, within a reasonable time, a valid ID or passport, or to demonstrate by other means that (s)he is the beneficiary of the right to move and reside freely within Belgium, before expulsion can be in order.

⁹⁶ Danish Aliens Order, section 5. For a full list, see the Announcement of Passports and Visa Conditions of the Ministry of Justice, *Justitsministeriets kundgørelse om pas- og visumforhold af 17. december 2013 som ændret den 1. maj 2014*, available at <https://www.nyidanmark.dk/NR/rdonlyres/444448FA-19E5-4AEC-A91C-80C16F70D977/0/en_kundgoerelse_pas_og_visumforhold_01012014.pdf>.

personal identity documents issued for foreigners, whereas Slovakia accepts ID cards and other travel documents (notably passports, diplomatic service and service passports and travel certificates). In conclusion, in this respect no problems arise in Hungary either, as all countries from which the visiting or resident EU citizens originate recognize both ID cards and passports, whereas Austria, Hungary and Romania also recognise the driving licence.

4. Consequences of expiry or loss

For a well-rounded inquiry, it was deemed appropriate to focus brief attention on a potential opposite of obstacles, in particular: the willingness to accept or condone the entry or exit of EU citizens not in possession of valid travel documents. After all, Directive 2004/38 demands the presentation of a *valid* passport or ID card for both short-term and long-term stay in another Member State.⁹⁷ In close relation, attention was paid to the possible imposition of sanctions on those found to be not in possession of a valid travel document when attempting to enter or exit, reside in, transit or travel across the country.

Little mercy or tolerance is displayed in Belgium, where the validity requirement is generally upheld with rigour. In case a Belgian citizen is found to be not in possession of a valid travel document, an economic fine or a criminal penalty may be imposed. If an EU citizen and/or his/her family member is found in Belgium without a valid ID or passport, an administrative fine may be imposed. The decisions imposing the administrative fine are immediately enforceable, but can be subjected to an appeal within a period of one month of the notification of the decision.⁹⁸

Similarly, all foreigners who wish to enter Danish territory must be in possession of a valid travel document, either a passport or a ID card.⁹⁹ Yet, in case an EU national is not in possession of a valid travel document when entering Denmark, they must be given “a fair chance” to obtain the necessary documents within a reasonable amount of time, or to have confirmed that they are covered by the EU free movement rules.¹⁰⁰ Moreover, Finnish and Swedish nationals are allowed to enter and exit Denmark without being in possession of a valid document if they travel directly from or to another Nordic country.¹⁰¹ Exempt from the requirement of holding

⁹⁷ Obviously, EU citizens are still allowed to enter or exit the territory if they are in possession of an emergency travel document, which if need be can be issued in the host country by the diplomatic representation of their country of origin. Another category generally exempt from the travel identity requirement, in accordance with Article 5(4)(a) of the Schengen Borders Code, pertains to foreign nationals who hold either a residence permit, an authorisation to return, or a long-term visa issued by another Schengen State who travel through the Member States concerned without any undue delay.

⁹⁸ Article 42*octies* paragraph 1 of the Law of 15 December 1980.

⁹⁹ Danish Aliens Act, section 39 (1) (*Udlændingeloven*), Aliens Order, section 1(1) (*Udlændingebekendtgørelsen*).

¹⁰⁰ Danish Aliens Order, section 11(9).

¹⁰¹ Icelandic and Norwegian nationals are also exempt from the passport requirement, if they enter or travel to Denmark, Iceland, Norway, Finland or Sweden.

any form of travel identity document are also young travellers (under 18 years of age) who are permanent resident in one of the Nordic countries, when they are travelling in a group directly to or from one of the Nordic countries and their trip is connected to a school excursion, sport event, or similar event and of no more than one month's duration.¹⁰² The Danish regime can in this light be qualified as particularly lenient / liberal.

In Italy, as a general rule, EU citizens also need to present a valid passport or ID card, yet according to Article 5.5. of Legislative Decree no. 30 of 2007 transposing Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member-States, "a Union citizen or a family member who is not a national of a Member State and who does not have the necessary travel documents or, if required, the necessary visa, cannot be turned back if he/she brings the necessary documents or if he/she corroborates by other suitable means according the national law, that they are covered by the right of free movement and residence, within 24 hours of the request". An EU citizen whose passport has expired while travelling in Italy and who has no other valid identity documents for leaving the country, will ordinarily be asked to contact the embassy or consulate in Italy to obtain a temporary travel document. Italians citizens without documents can be simply accompanied to a police office in order to identify him/her self, but according to Article 651 of the Italian Criminal Code, a refusal to help establish one's identity to a public official may be punished by an arrest (*arresto*) of up to one month or a financial penalty (*ammenda*) of EUR 206. As to EU citizens, according to the aforementioned Legislative Decree (Article 1.1 sub e D.Lgs n. 32/08) "an expulsion decision of other Member States' citizens and their family members irrespective of nationality may also be taken when the conditions are absent that give the person concerned the right of residence".

In Hungary, EEA nationals holding (1) a valid travel document, or (2) a valid ID card, or (3) a travel document, identity card or any other recognized document for the purpose of entry which has expired (in case an international treaty declares it) have the right of planned residence not exceeding three months (ninety days) from the date of entry, as long as their residence does not become an unreasonable burden on the social assistance system of Hungary. Hungarian nationals are not prevented from returning to Hungary for failing to be in possession of a travel document. At the same time, they must apply for a temporary personal passport or emergency travel document to be able to identify themselves, and to lawfully enter the territory of Hungary.¹⁰³ As for exiting the country, the Constitution states that: "Everyone staying lawfully in the territory of Hungary shall have the right to move freely and to freely choose his or her place of stay."¹⁰⁴ This includes the right to freely leave the territory of Hungary.¹⁰⁵ Though the right to travel abroad must by default be exercised with a valid travel document (or ID card), Hungarian nationals have the right to travel to countries identified by

¹⁰² Announcement of Passports and Visa Conditions of the Danish Ministry of Justice, par. I.2.

¹⁰³ Act on Travelling Abroad, section 10.

¹⁰⁴ Article XXVII.

international treaties even upon expiry of their travel document or ID card if an international treaty allows them to do so. The only other possibility for EU citizens to still exit the country is the *ex lege* situation in which (s)he does not possess a valid travel document, and their right of residence is (declared) terminated by the competent authority.¹⁰⁶ This amounts to the sanction of expulsion (“kiutasítás”), whereby (s)he is required or made to leave the country within three months from the operative date of that declaration (subject to judicial review).¹⁰⁷ During these proceedings, two further sanctions can be identified. First, the competent authority might take away the travel document of the EEA national, against which there is no legal recourse.¹⁰⁸ Second, the costs associated with expulsion must be borne by the person expelled. When the document is stolen, destroyed or lost and the EU citizen seeks to remain resident instead, (s)he is to report this to the competent authority, and obtain a replacement in these cases.¹⁰⁹

In The Netherlands, Article 4.5(1)(a) of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*) holds that aliens wishing to enter the Netherlands are required, upon request by a civil servant tasked with the border protection, to provide the document for border passing (*document voor grensoverschrijding*) in their possession.¹¹⁰ According to case law, a document for border passing must be understood as meaning a valid passport or any comparable travel document.¹¹¹ Accordingly, it is not allowed to enter the territory without being in the possession of a valid travel document. Article 4.5(3) of the Foreigners Decree 2000 holds that the abovementioned provision also applies to EU citizens. Article 4.5(2) of the Aliens Decree 2000 holds that Article 4.5(1)(a) is equally applicable in case aliens wish to exit the Netherlands. Accordingly, EU citizens are not allowed to exit the territory without being in the possession of a valid travel document. According to Article 2 of the Act on the Identification Requirement (*Wet op de identificatieplicht*), every person that has reached the age of fourteen is required by law to provide a valid travel document upon the request of the civil servants mentioned by that article.¹¹² According to Article 447e of the Penal Code (*Wetboek van Strafrecht*), failure to comply with that rule can be sanctioned by a penal fine to the maximum amount of EUR 4.100.¹¹³ In practice though, the Dutch Public Prosecutor's Office applies a fine of merely € 90 for a failure to provide a valid travel

¹⁰⁵ Act on Travelling Abroad, section 1, p. 1.

¹⁰⁶ Act No. I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence, section 14, p. 1 – though this cannot diminish the rights of long-term resident EU citizens and their enhanced protection against expulsion under Directive 2004/38/EC.

¹⁰⁷ *Ibid.*, section 15, p. 2, p. 4. The declaration is subject to judicial review.

¹⁰⁸ *Ibid.*, sections 47/A., 48/A.

¹⁰⁹ *Ibid.*, section 28, pp. 1 and 4 respectively.

¹¹⁰ See <<http://wetten.overheid.nl/BWBR0011825/2015-10-01>>.

¹¹¹ Judgment of 19 May 1989 of the Dutch Council of State, Administrative Law Division (‘ABRVs’), ECLI:NL:RVS:1989:AN1123

¹¹² See <<http://wetten.overheid.nl/BWBR0006297/2014-01-20>>.

¹¹³ See <<http://wetten.overheid.nl/BWBR0001854/2016-01-01>>.

document.¹¹⁴ This measure is however of a general nature, and does not specifically apply to entry or exit of the country by the nationals. In this regard, the more practical consequences of not possessing a valid travel document may be pointed out: entering or exiting the country by plane will be impossible, as airlines will not allow someone to board without a valid travel document.

¹¹⁴ See <https://www.om.nl/onderwerpen/boetebase/?boete_tree=21951,21920#beslissingpad2195121920>.

VI. ACTUAL OR POTENTIAL OBSTACLES FOR TCN FAMILY MEMBERS

1. Possible documentation-related obstacles suffered by TCN family members with residence cards

Not only EU citizens, but also their TCN family members may experience difficulties in their access to and use of travel documents, either *de iure* or *de facto*. Those difficulties may moreover be condoned by EU law, or expressly condemned as incompatible with the rules applicable to the relevant situation. A distinction can be drawn between cases in which TCN family members carry the (optional) EU residence card with them when travelling (alone or together), or when they are doing so while not in possession of that document; the legal consequences vary, depending on the scenario at hand. Both questions in the questionnaire were considered especially useful to expose potential discrepancies between the 'law in the books' and the 'law in action'.¹¹⁵

In Belgium, TCN family members, regardless if they travel alone or join an EU citizen, can freely enter the country upon a presentation of a valid passport coated, if applicable, with a valid visa.¹¹⁶ Those possessing a residence or permanent residence card as family members of an EU citizen do not need to request a visa to enter into the territory of Belgium.¹¹⁷ In case (s)he is not in possession of the required documents, they are enabled to acquire these within a reasonable time, or to corroborate or prove by other means that they are beneficiary of the right to move and reside freely, before proceeding with his/her expulsion. Similarly, in order to enter Denmark without having a passport or other valid travel document coated with an entry visa, a TCN family member must be the holder of a EU residence card issued according to the provisions of Directive 2004/38/EC, or otherwise be a beneficiary of the free movement rules.¹¹⁸ This applies both when travelling with family members, when travelling alone, and when travelling alone on domestic flights. Italian law equally provides that the possession of this valid residence card exempts family members from the visa requirement. Moreover, if the family member is in possession of such a card, customs officials do not place an entry or exit stamp in their passport. The applicable Hungarian rules also make clear that TCN family members accompanying an EEA national, joining an EEA national (resident), or who are dependent on, or for a period of at least one year have been members of, the household of a Hungarian citizen, or if serious health grounds require the personal care of that family member by the Hungarian citizen, may enter the territory of the

¹¹⁵ Compare the remarkable facts giving rise to ECJ, Case C-202/13 *McCarthy v SSHD*, ECLI:EU:C:2014:2450, and the initial assessment of the referring judge, Mr. Justice Haddon Cave in *McCarthy v SSHD* [2012] EWHC 3368.

¹¹⁶ A valid visa pursuant to the Regulation 2001/539/EC of 15 March 2001 listing the third countries whose nationals are subject to the obligation to visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement.

¹¹⁷ Issued on the basis of Article 9 of Directive 2004/38/EC of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of member States.

¹¹⁸ Announcement of Passports and Visa Conditions of the Ministry of Justice, at IV (6), Aliens Order section 11(11).

Hungary without a visa, provided they hold an official document certifying the right of residence, or a the family members residence.¹¹⁹ In other words, also in Hungary TCNs possess the right to entry upon possession of a family member's residence card, irrespective of whether they travel with (accompany) or without (join) their EEA family member.¹²⁰ In the Netherlands, the main rule is that third country nationals need to obtain an entry visa when entering the Netherlands. Article 8.9(1) of the Aliens Decree creates an exception to this rule by removing the need to obtain an entry visa for third country family members that hold a valid family member's residence card from an EU/EEA country or Switzerland. The explanatory memorandum of the amendment decision of the Aliens Decree 2000 clarify that the provision refers to a family member's residence card in the sense of article 10 of Directive 2004/38.¹²¹ The exception only applies to family members covered by Article 8.7(2-4) Aliens Decree 2000. All three paragraphs only apply to third country family members who are accompanied by a family member that has the nationality of a country in the EU, the European Economic Area, or Switzerland, or when they join such a citizen in the Netherlands. Article 8.7(2) Aliens Decree largely overlaps with the definition of 'family member' provided for in Article 2(2) Directive 2004/38. Article 2(2)(b) required implementation into the national legal order; the Netherlands has done so by defining 'partner' as 'a person that has concluded a registered partnership which is valid according to Dutch international private law'. Article 8.7(3) Aliens Decree 2000 is essentially the identical implementation of Article 3(2)(a) of Directive 2004/38. Article 8.7(4) Aliens Decree implements Article 3(2)(b) of Directive 2004/38. However, it not only applies to an unmarried partner with whom the union citizen has a durable relationship, but also to the direct descendants under the age of 18 of those partners, as long as they accompany or join the partner in the Netherlands.

2. Possible documentation-related obstacles suffered by TCN family members without residence cards

A related point of interest concerns TCN family members of EU nationals not in possession of a family member's residence card: do Member States require that they present an entry visa when travelling alone to the country, or even when accompanied by those family members? This is indeed proves to be the case in Belgium, regardless of when they are travelling alone or together. In Denmark, the Aliens Act states that TCNs covered by EU rules can enter and stay in Denmark for the same amount of time as EU citizens, but where

¹¹⁹ Act No. I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence, section 3, p. 4. The rapporteur draws attention to the fact that, for the clause which the Consular Services of the Government of Hungary translate as "*provided... or...*", in which "or" clearly expresses disjunction, the Hungarian text uses the word "*illetve*". "*Illetve*" is a misleading expression in the Hungarian (legal) semantics, since it carries the meaning of both "and" (conjunction) as well as "or" (disjunction), requiring courts and authorities to clarify its supposed meaning in several cases.

¹²⁰ In addition, they are still required to have a valid travel document; *ibid.*, section 3, p. 3.

¹²¹ Official Gazette ('Staatsblad') 2006, 215, p. 33; accessible via <<https://zoek.officielebekendmakingen.nl/stb-2006-215.pdf>>

applicable, have to obtain a visa before entering Denmark.¹²² This means that if they are not in possession of a residence permit or EU residence card, TCN family members also require an entry visa, both when they are travelling to Denmark together with their family or alone. If a foreigner indicates that (s)he is a family member of an EU citizen but not in possession of a valid travel document, (s)he must be given “a fair chance” to obtain the necessary documents within a reasonable amount of time, or to have confirmed that they are covered by the EU rules on free movement.¹²³ In Italy as well, TCN family members of EU citizens require a visa if they are not in possession of a residence card. However, according to Article 5 of Legislative decree no. 30 of 2007, they can acquire such an entry visa free of charge, and on the basis of an accelerated procedure. Hungary exhibits a similar generosity by not ruling out the possibility of entering Hungary visa-free in such situations; yet in order to do so, TCNs do have to possess “a document (...) certifying the right of residence”. The Act on the Entry and Residence of Persons with the Right of Free Movement and Residence enumerates three types of this document:

- the document certifying the right of residence for a period not exceeding ninety days, for a planned residence;¹²⁴
- the document certifying the right of residence of third-country national family members for a period exceeding three months (“residence card”);¹²⁵
- the document certifying the right of permanent residence of EEA nationals and family members (“permanent residence card”).¹²⁶

The above finds exception in all Member States surveyed though if the case concerns a foreign national who holds a residence permit (or re-entry visa permit) issued by another Schengen country, even without a valid passport or other travel document, pursuant to Article 5(4)(a) of the Schengen Borders Code.

¹²² Danish Aliens Act, section 2(2) and section 39(2). Citizens of certain countries do not require a visa to enter Denmark.

¹²³ Danish Aliens Order, section 11 (10).

¹²⁴ Act No. 1 of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence, section 20, p. 1. This document is available both for EEA nationals as well as their TCN family members.

¹²⁵ *Ibid.*, p. 1.

¹²⁶ *Ibid.*, p. 1.

VII. ANY OTHER OBSTACLES

1. Other *de iure* obstacles

It was lastly asked of rapporteurs to flag any other *de jure* or *de facto* obstacles in the Member States concerned as regards the acquisition or use of travel documents, not addressed in the responses to any of the earlier questions. The suggestion was made to procure relevant data from either diplomatic offices of other Member States present in the country, national complaint bodies such as Ombudsmen, or by contacting a selection of EU citizens to learn which specific other problems they have encountered.

Despite that guidance, the Danish rapporteur immediately admitted that, it did not prove possible to identify any other hindrances apart from those already mentioned before. The Italian and Belgian rapporteurs mainly pointed to the practical issues mentioned in the next paragraph. In the Hungarian Report, the matter raised carries a faint legal dimension, relating as it does to the waiting period for a resident EU citizen to obtain travel documents for newborn children, resulting in particular from the length of time required to receive a copy of the birth certificate issued by the Hungarian authorities when the child was born in Hungary. Though the actual legal ground (potential policy guideline stipulating the additional formalities to be carried out ‘behind the scenes’?) could not be brought to the light, it demonstrably takes significantly longer to receive a Hungarian birth certificate when the child has a foreign nationality than when it is a Hungarian citizen. This may possibly be subjected to further inquiry.

2. Other *de facto* obstacles

In Italy, access to travel documents may sometimes *de facto* be hindered by difficulties in understanding the complexity of the legal framework for travel documents as a whole, since it often consists of a plurality of legal sources with a different nature (e.g. statutory, administrative, etc.), different positions in the Italian legal hierarchy, and concerning different branches of law (administrative, criminal, civil, constitutional etc.). For this reason, an adequate availability of information on institutional websites or at the responsible offices is strongly advisable, but currently falling short. The basics are often fairly well laid out, yet from an accessibility perspective, translations in (at least the main) EU languages still need to become more broadly available.

In Belgium, gaining access to travel documents can in practice turn out to be a most exhaustive experience especially for mobile EU citizens, considering the complexity of the Belgian administration and the concomitant linguistic barriers already mentioned before. The procedure itself is protracted, conducted in a multitude of steps, riddled with cumbersome documentary requirements (also e.g. with regard to procuring official translations of documents composed in the country of origin). The Foreign Office takes its time to decide which type of residence permit is granted to a foreigner, which decision is then submitted to the municipality, which

forwards the necessary information to initiate the production process of the e-card, which then needs to be collected and activated. To the mind of the national rapporteur, an acceleration of proceedings is deemed both feasible and desirable.

VIII. CONCLUSION

From the preceding paragraphs, we may draw a series of inferences that might inform further research or possible follow-up actions and inquiries. It should be underlined that the next lines should not be considered to offer an exhaustive 'executive summary', and that in order to avoid misunderstandings, the reader is well advised to peruse the different sections carefully and extensively.

From the first part of this report, it first of all emerged that the PRADO database may not be entirely accurately reflecting the state of play in the Member States, as at least for one country the data was found to be significantly off the mark. In the interest of transparency and legal certainty, some extra scrutiny or verification here of the functioning of the system could very well be warranted. At the same time, it became clear that the operationalisation and application of the core instrument, EU Regulation 2252/2004, appears to proceed smoothly in most countries surveyed, despite the practical errors committed (and technical difficulties encountered) in some of them. The country also evidenced the great variety in the general periods of validity of the different types of travel documents that are in common usage the Member States concerned. Related differences were found to exist with regard to giving prior warning to the bearer upon (imminent) expiry of the document(s) in question, and the need to renew them. In both respects, for a number of reasons further expanded upon above, it could be considered to demand a greater uniformity here on the occasion of a future amendment of the basic Regulation.

In the second part of this report, dealing with issues of acquisition, renewal and loss, some anomalies were flagged, such as the fact that electronic ID cards may as a matter of principle not be issued outside of Italy. Similarly and more uncomfortably, due to a lack of the required technical facilities for incorporating biometric data, it was noted that not all Danish representations abroad are presently capable of issuing passports (and for financial reasons, neither are all the Dutch ones. Measures have been adopted or are underway to facilitate the transition, but meanwhile for some the hardships will persist. As regards the costs of obtaining travel documents, despite as great diversity in the charges that apply in the countries surveyed, none of the national reports gave rise to the thought that too high a threshold has been imposed in this respect, particularly since in all countries studied, waivers or discounts can be granted to the less advantaged. In contrast, attention was drawn to the administrative burdens imposed, especially in the case of applications to the benefit of minors that are foreign-born, since ordinarily the original birth certificate has to be produced, accompanied by an authenticated translation. The issuance of this birth certificate, necessary to proceed with the application for an ID card or passport to the authorities of the state of nationality, may however take some time. Such delays pose obvious hindrances for the child's and her parents' ability to travel for a few months after the child's birth. A different dimension that was also addressed in the second part of this report pertained to the grounds on

which Member States' public authorities are entitled, and have proceeded to withdraw a person's passport. In this regard, we were able to present a picture that was rather mixed, but from which it did become clear that the public order justification looms large, and that the grounds employed may across the board be considered compatible with the substantive and procedural requirements imposed by Directive 2004/38. The application in practice sparked litigation in some countries, yet there is little to suggest that the relevant EU standards are or have been violated. Rather, the sparse case law included in various national reports conveys the impression that public authorities have (at least so far) succeeded in remaining within the required bandwidth. A loosely connected matter touched upon in this section of the report pointed out that in most countries, information on the (procedure for) acquisition of travel documents does not seem to be as broadly accessible as possible and desirable. Efforts to ensure a greater dissemination of instructions for resident citizens holding the nationality of other Member States are therefore preferably undertaken in (at least) the main EU languages. Equally advisable could be to oblige national authorities to inform (at least resident and registered) citizens beforehand with regard to the imminent expiry of their travel documents, a very civil practice that is at present not uniformly found in all countries surveyed.

The third part of this report, concentrating on the inclusion of biometric features in passports and other travel documents, highlighted that specific warnings, objections and protests were lodged in several Member States. The competent authorities generally took heed of these when adopting measures to effectuate the basic Regulation, though not all concerns were addressed in full (e.g. no Privacy Impact Assessment in Denmark was carried out, despite the insistence of the national data protection authority; and doubts persist in The Netherlands with regard to the possibility to utilise the data stored for other purposes). Though indicating perhaps a lack of visibility rather than a lack of interest, in none of the countries surveyed was this followed by the launch of judicial action, in the form of constitutional complaints or other forms of litigation against public authorities, except for The Netherlands (where pursuant to a preliminary reference from the Dutch supreme administrative tribunal, the ECJ poured cold water on the claims submitted). A key interest of the distributed questionnaire was to attempt to establish whether in any way the inclusion of biometric data in passports and travel documents has been experienced as a hindrance, and whether it exerted a 'chilling effect' on the (rate of) applications for obtaining or renewing travel documents in the country concerned. In their responses, most rapporteurs pointed to a lack of (reliable) data. From the numbers provided, among the countries surveyed both upward and downward trends can be perceived, yet the possible correlation(s) remain unclear. While the central processing of the data did not meet much (public) resistance, technical glitches and security problems in some countries has triggered a palpable series of concerns which must ultimately pre-empt any feelings of complacency.

From the fourth part of the report, it could be distilled that differences between legal systems of the various Member States can actually or potentially create particular obstacles for static and mobile EU citizens alike.

Such hindrances may first of all be experienced by own nationals, with regard to the accessibility of the venues and the related costs for obtaining travel documents – though less when resident in their original Member State, and more when residing abroad. It would seem that Dutch, Belgians, Danish, Hungarians and Italians especially experience those in the latter case, depending of the country and city where they have moved to, mainly because of the location of their national embassies and consulates (which sometimes can be very far from their place of residence) and the services offered there. Danish nationals living suffer particular hardships in this respect due to the limited availability of representations where a biometric passport can be obtained, which is insufficiently compensated by the possibility to apply for a biometric passport in any municipality in Denmark. Conversely, administrative practices have placed particularly Swedish and Romanian citizens at a disadvantage there. A similar predicament was flagged with regard to The Netherlands, as Dutch expats remain forced to travel to the Schiphol ‘border municipality’ in order to have their travel documents renewed, posing an undeniable extra burden. In Italy, a main hindrance is derived from the fact that these are located only in few big Italian cities; non-nationals not resident in one of these cities therefore need to travel through Italy in order to obtain or renew their travel documents. ‘Static’ EU citizens appear to experience most difficulties in Italy as well, due to the need to access different venues and the time this consumes. For the fingerprinting, persons need to report to the police, which some will consider (psychologically) onerous. There are moreover notable differences in the costs to be incurred between ‘static’ and ‘mobile’ EU citizens.¹²⁷ Mobile EU citizens generally pay higher fees at consulates and embassies abroad, pursuant to a fixed price established by the Member State of origin. This was however not reported to pose an insurmountable obstacle anywhere. More trouble is caused by the discrepancies between the travel documents recognised as valid ID in the home country of the three largest groups of non-national EU citizens that annually visit the countries concerned, as compared to the travel documents that are recognised in the Member State in question. For example, it emerged that the groups of mobile EU citizens most frequently visiting Belgium may potentially run into trouble as driver’s license is not accepted as a valid means of identification there, while it is accepted as such in their home country. Conversely, that risk is in Denmark only present for Dutch nationals, as for Swedish, German and Romanians a passport and ID card is accepted in their home countries, while the Danish authorities readily accept the latter (despite Denmark not issuing national identity cards to Danish nationals itself). However, while in Sweden, it is possible to obtain an ID card, it is not possible for Swedish citizens to get an ID card when they move to Denmark, if they so wished, as their not being resident in Denmark renders them ineligible for a Swedish ID card. These divergences constitute genuine obstacles for mobile EU citizens.

¹²⁷ As indicated, in some Member States even static EU citizens may experience such difference, e.g. in Belgium and the Netherlands, the main reason being the local taxes that the municipalities can impose on top of the fixed price established at the central level.

TCN family members are not confronted with actual or potential obstacles that fall foul of the rules to which they can be subjected, as can be derived from the fifth part of this report. Ordinarily, regardless if the TCN family members travel alone or join an EU citizen, they can freely enter the country upon a presentation of a valid passport coated, if applicable, with a valid visa.¹²⁸ Those possessing a residence or permanent residence card as family members of an EU citizen however do not need to present a visa.¹²⁹ The Schengen Borders Code, where applicable, is thus properly respected in the countries surveyed.

By way of safety net, the sixth and final part sought to pay attention to any other (potential) obstacles not flagged already. The Hungarian rapporteur pointed to the difficulties experienced by resident EU citizens in the country, who experience a protracted waiting period to obtain travel documents for newborn children, resulting in particular from the length of time required to receive a copy of the birth certificate issued by the competent authorities when the child was born in Hungary. The Italian and Belgian rapporteurs pointed to the fact that difficulties are experienced by understanding the complexity of the framework for travel documents as a whole, since it often consists of a plurality of sources of law with a different legal nature. The relevant procedures, composed of several steps, riddled with cumbersome documentary requirements (also e.g. with regard to procuring official translations of documents composed in the country of origin), can prove exhausting. Information on institutional websites and at the responsible offices also turns out to be defective. Often the basics are well laid out, yet from an accessibility perspective, translations in at least the main EU languages still need to become more broadly available. Finally, it almost goes without saying that, where possible, an acceleration of proceedings is highly desirable as well.

¹²⁸ A valid visa pursuant to the Regulation 2001/539/EC of 15 March 2001 listing the third countries whose nationals are subject to the obligation to visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement.

¹²⁹ Issued on the basis of Article 9 of Directive 2004/38/EC of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of member States.

WP 7 CIVIL RIGHTS
CASE-STUDY 7.6
ACCESS TO TRAVEL DOCUMENTS
Belgium



UNIVERSITY OF ANTWERP

PART I – TYPOLOGY AND FORMAT

Question 1 – Typology.

- ✓ *Which are the main types of travel documents that are in common usage in your country?*

Please verify whether the information that you are able to provide corresponds with that officially registered in the PRADO database (<<http://www.prado.consilium.europa.eu/>>) – so that we might verify whether the latter is perhaps inaccurate or no longer up to date.

The most common travel documents that Belgium provides/issues to its nationals can be categorized as follows:

- Identification Card or Document.¹
- Passport.
- Driving Licence.
- Visa and/or Resident related documents (the foreigner card).
- Other travel documents.

The I.D. is the most common used travel document and one of the most important that Belgium issues² to its nationals. The I.D. not only allows to proof the identity of the holder but also allows him/her to travel within Belgium, the European Union and some third countries³, i.e., countries bordering the European Union or other more distant countries when the purpose is to travel as a tourist. The duration of the stay in a foreign country⁴ cannot generally exceed of three months. The same conditions may apply, in general, to business travel⁵. Since 1 December 2010 Belgium switched to issuing the e-I.D cards, i.e., the electronic I.D. In this context Belgium has three statutory e-I.D.⁶; the e-I.D. for Belgian citizens over the age of 12, the kids-I.D. for children under 12 and the foreigners electronic card (foreigners e-card, hereinafter)⁷ for foreigners staying in Belgium. The e-I.D. is the proof of identity to every Belgian citizen over 12 years. It is issued by the local Belgian authorities. But is not only a proof of identity and a valid travel document, the e-I.D. contains a microchip

¹ I.D., hereinafter.

² The authorities responsible for issuing the I.D. are the local authorities.

³ An accurate list of third countries recognizing Belgian I.D. as a travel document cannot be provided due to the extension, nonetheless a first overview can be obtained in the website of the European Council, more precisely, in the Public Register of Authentic travel and identity Documents online (PRADO) at <<http://www.consilium.europa.eu/prado/en/prado-recognised-documents.html>>.

⁴ For private, tourist or family purposes.

⁵ See <<http://www.ibz.rrn.fgov.be/fr/documents-didentite/eid/faq/>>.

⁶ With the new e-I.D. and foreigners' e-card, Belgium finalized its e-Government project aiming to simplify administrative procedures and modernize the public services.

⁷ The foreigners' e-card replaces the paper resident related document.

with all the personal details and digital certificates. Thus, in order to use the e-I.D. a personal pin code is provided⁸.

It is important to note, that in a country as Belgium with so pronounced languages differences, depending in which linguistic community the I.D. is issued, the language used and, consequently, in which the document is printed is different⁹. If the municipality is placed in the French speaking region, then the I.D. is issued in French. In case the municipality is placed in the Flemish speaking region, the I.D. is issued in Dutch. Finally, it can also be noted that the text can be issued either in French or Dutch or French or German, if the municipality is placed in Brussels capital or surrounding or in the German speaking Region.

The kids-I.D. is the proof of identity for Belgian children under 12 years. The new document replaces the previous paper proof of identity required to Belgian children when traveling abroad. It is a valid and accepted travel document in most of the European Union Member States and in some third countries. The kids-I.D. is issued by the local authorities in Belgium. This document does not only allows to identify the holder and be used as a valid travel document, it has also other applications attached to the chip inserted in the card. The microchip contains all the relevant details regarding the identity of the parents or contact person, address, number in case of emergency. Within the useful applications included in the microchip the most remarkable one is the 'Hello Parent / Hallo Ouders'¹⁰, a service that offers extra protection to the children in case of emergency. To make use of the kids-I.D. is necessary also to activate it and after the activation a pin code is provided¹¹.

For Belgian living abroad every Belgian over 12 years, whose domicile is abroad and is listed in the population register kept by the Embassies or Consulates must apply for a Belgian identity card. Since 1 of December 2010 Belgian Embassies and Consulates issues the e-I.D. as well. The e-I.D. issued by a Belgian Embassy or Consulate is a valid travel document within the Member States and a number of neighbouring countries¹². The e-I.D. remains valid even when the Belgian national have moved to another different jurisdiction of Belgian Embassy or Consulate, which issued the e-I.D., or even if case that the holder returns to Belgium. Since 2008 the e-I.D. issued by a local authority remains valid when the holder has moved abroad, but (s)he must had registered the moving abroad with his/her previous local authority¹³.

⁸ See more about the e-I.D. at <http://eid.belgium.be/en/find_out_more_about_the_eid/the_electronic_identity_documents/the_eid>.

⁹ As established in article 4 of the Royal Decree of 25 March 2003 on identity cards / Arrêté royal du 23 Mars 2003 relatif aux cartes d'identité / Koninklijk besluit betreffende de identiteitskaarten. *Moniteur Belge / Belgisch Staatsblad* 28 March 2003. The Royal Decree entered into force the 7 April 2003.

¹⁰ The service can be check in < <https://www.halloouders.be/>>.

¹¹ See < http://eid.belgium.be/en/find_out_more_about_the_eid/the_electronic_identity_documents/the_kids_id>.

¹² As indicated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation <http://diplomatie.belgium.be/en/services/services_abroad/identity_card_for_belgians/>.

¹³ As appears from the website of Belgian Foreign Affairs, Foreign Trade and Development Cooperation <http://diplomatie.belgium.be/en/services/services_abroad/identity_card_for_belgians/>.

Another type of I.D. is the provisional I.D. A temporary I.D.¹⁴ that every Belgian citizens can get, for free, in case of loss, theft or destruction of his/her I.D. if they need to travel abroad. It can only be used as a travel document which establishes the identity of the holder when traveling. This document is accepted as a travel document by most of the Member States. It is indeed the proof of loss or destruction to justify the absence of the identity card during the necessary while a new I.D. is issued¹⁵.

The Royal Decree of 30 October 1991¹⁶ on the documents of stay in Belgium for certain foreigners, establishes that the Belgian Minister of Foreign Affairs can issue some special I.D. to foreign Diplomatic¹⁷ or Consular¹⁸ agent, to the administrative or technical personnel of the Diplomatic and Consular Missions¹⁹, a special I.D.²⁰ and a special I.D. for children²¹. These documents can be categorized more as a resident permit related documents than I.D. *per se*, however according to the terms used in the Royal Decree they will be treated as an I.D. in this report.

Regarding what is established in article 1 of the Royal Decree of 30 October 1991, a diplomatic I.D. is issued to a foreign national who is in possession of a diplomatic passport and that exercises a Diplomatic function in Belgium²². Moreover, article 2 of the Royal Decree of 30 October 1991 settles that the foreigners holding the status of career consular official accredited and being in possession of a diplomatic passport can be granted with this I.D., i.e., the so-called Modell II. Sometimes, even, their family members can benefit from it. This resident permit allows a visa-free entry in the Member States of the Schengen area. However, the holder must be in possession of a valid passport or a travel document that has to respect the conditions on access to the territory of the State²³.

The foreigner technical and administrative personnel of the embassies and consular missions can also be granted with an I.D., i.e., the so-called Modell III. The holder must be entitled to have a service passport as an employee of the embassy or of the consular mission. It is also a necessary condition the registration of the holder in the Embassy or Consular Management Protocol, as article 3 of the Royal Decree of 30 October 1991 sets out. This document, also, allows the holder to enter visa-free in the Member States of the Schengen

¹⁴ The temporary I.D. is issued in the type in use before 1985.

¹⁵ The temporary I.D. can only be obtained if the concerned person requested and in case that he/she does not have a valid passport.

¹⁶ Arrêté royal du 30 Octobre 1991 relatif aux documents de séjour en Belgique de certains étrangers. *Moniteur Belge / Belgisch Staatsblad* 17 Decembre 1991.

¹⁷ The so-called Model I.

¹⁸ The so-called Model II.

¹⁹ The so-called Model III.

²⁰ The so-called Model IV.

²¹ The so-called Model V.

²² Under certain conditions this I.D. can be also issued to his/her family members.

²³ G. AUSSEMS, 'Les titres de séjour en Belgique', Dossier Thématique, ASBL (Association pour le droit des étrangers), Décembre 2012, p. 18. The full document is accessible at <file:///C:/Users/MSolisSantos/Downloads/les%20titres%20de%20sejours%20en%20belgique-guide%20pratique%20-%20dec12%20-%20G%20Aussems%20(3).pdf>.

area as long as the holder is in possession of the valid passport or travel document which respect the conditions on access to the territory of the State aiming to enter in²⁴.

The special I.D. or so-called Modell IV, is issued to the foreign staff members in the service of the diplomatic or consular mission. It is also issued to private servants of diplomats and consuls and people on official mission. Sometimes, it can be issued, under certain, conditions to their family members as indicated in article 4 of the Royal Decree of 30 October 1991. It is a valid travel document that allows the holder to enter visa-free in the Member States of the Schengen area as long as the holder is in possession of a valid passport or any other travel document which fulfil the conditions on access to the territory of the State aiming to enter in²⁵.

A special I.D.²⁶ can also be issued to foreign children under 5 years if they hold an I.D. issued by the Embassy or Consular Management Protocol²⁷. It is a valid travel document which allows the holder entre visa-free in the Member States of the Schengen area as long as the holder is in possession of a valid passport (or subscribe under the passport of the parents) or any other travel document which fulfil the conditions on access to the territory of the State aiming to enter in²⁸.

The new biometrical I.D. for seafarer's adopted in the Convention n.° 185 of 2003²⁹ of the International Labour Organization³⁰. This new card will be issued to seafarer's and it will include biometrical information in order to increase the security of the documents. It also intend to improve the conditions of seafarer's when arriving in a foreign port. Even when the Convention was adopted by Belgium it has not yet been ratified, thus Belgium is not currently issuing this kind of travel document.

The Belgian passport is a travel document issued only to Belgian nationals which is in the form of a booklet whose content and form are fixed by international agreements³¹. The passport can be issued to every Belgian national since the birth, no minimum age is required. It is issued³² normally by the local authorities to every Belgian national that has his/her

²⁴ G. AUSSEMS, op. cit. (n. 23).

²⁵ G. AUSSEMS, op. cit. (n. 23).

²⁶ The so-called Model V.

²⁷ Article 5 of the Royal Decree of 30 October 1991.

²⁸ G. AUSSEMS, op. cit. (n. 23).

²⁹ The Convention entered into force the 9 February 2005.

³⁰ The full text of the convention as well as the countries which has ratified it is available at <<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang--fr/index.htm>>.

³¹ This is the definition set out in article 1.13° of the Law of 21 December 2013 on Belgian Consular Code / Le Code consulaire du 21 Décembre 2013 / Consulaire Wetboek. *Moniteur Belge / Belgisch Staatsblad* 21 January 2014. On the other hand it is the Ministerial Order of 19 April 2014 concerning the issuance of passports / Arrêté Ministériel du 19 Avril 2014 concernant la délivrance de passeports / Ministerieel besluit aangaande de afgifte van paspoorten. *Moniteur Belge / Belgisch Staatsblad* 4 June 2014 (the Ministerial Order entered into force the 14 June 2014), regulates all the perquisites to be taken into account in order to issue a passport.

³² However and as established in articles 1 and 2 of the Ministerial Order of 19 April 2014 and in article 58 of the Belgian Consular Code, the Minister of Foreign Affairs authorizes to other administrations to issue the passport. In Belgium are authorized the Federal Service of Public Foreign Affairs, Foreign Trade and

official residence in Belgium. It is a valid travel document worldwide recognized and usable³³. Since 11 April 2014, every local authorities issue a biometric passport with fingerprints³⁴. The different types of Belgian Passport are settled in article 57 of the Belgian Consular Code and in the Ministerial Order of 19 April 2014 concerning the issuance of passports³⁵. It can be differentiated the following types of passport:

- the ordinary passport, issued only to Belgian nationals and world-wide valid,
- the ordinary supplementary passport, issued to Belgian national in addition to his/her ordinary passport in case that this one is not enough to prepare and conduct the planned trips or stay abroad due to a large number of visa applications to be introduced over a short period of time, to travel to countries with which the relationships are difficult or use a different passport³⁶,
- the Belgian diplomatic passport or service passport, issued to Belgian who have a role of the Belgian Federal Administration or of the Belgian Community or Regional government within the legislative, executive or judicial power.

Other Belgian travel documents are documents issued in special circumstances to Belgians and non-Belgians nationals who are established in Belgium³⁷. On the contrary that happened with the Belgian passport, these documents take other forms than a booklet³⁸. These travel documents are issued for non-Belgian who benefit from an indefinite right of residence in Belgium, and they cannot access their national Embassy or Consulate because there is none in Belgium, such as; (i) refugees recognized by Belgium, (ii) stateless persons recognized by Belgium, (iii) non-Belgians recognized not as refugee or stateless person by Belgium and which there is no foreign national administration or international organization recognized competent or able to issue passports or travel documents³⁹.

The Belgian driving licence cannot be considered as a travel document in *stricto sensu*, as it can only be used for identify a person if the country recognizes foreign driving licence as a valid document to identify the holder. Belgian nationals, in a very exceptional cases, can used their driving license to be identified themselves in Belgium. However every Belgian is obliged to circulate within the country carrying the I.D. and the driving licence. Belgium does not recognized the use of foreign driving licence to identify the holder.

Development Cooperation, the Ministry of Defence and the devolved authorities designated by the Minister. Abroad Consular and Diplomatic Post of Belgian career are authorized.

³³ Subject to fulfil any applicable visa requirements.

³⁴ As indicated in the website of Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service, <http://diplomatie.belgium.be/fr/Services/services_a_letranger/passeport_belge/passeport_biometrique/belge_en_belgique/>.

³⁵ Arrêté Ministériel du 19 Avril 2014 concernant la délivrance de passeports / Ministerieel besluit aangaande de afgifte van paspoorten. *Moniteur Belge / Belgisch Staatsblad* 4 June 2014. The Ministerial Order entered into force the 14 June 2014.

³⁶ As established in article 3 of the Ministerial Order of 19 April 2014.

³⁷ As set out in article 57.4 of the Belgian Consular Code.

³⁸ As set out in article 1.14° of the Belgian Consular Code.

³⁹ As established in article 57.3 of the Belgian Consular Code. For example for the Somali nationals who have an unlimited resident right in Belgium or for nationals coming from Myanmar.

Belgian authorities, i.e., Diplomatic and Consular Post⁴⁰, issued three types of entry visas for Belgium: airport transit visa (type A)⁴¹, short stay visa⁴² (type C) or long stay visa⁴³ (type D). The short stay visa can be applied for reasons of touristic visits, visits to family and friends, cultural or sports manifestations, business trips, short traineeship or transit through the Schengen area⁴⁴. Except the visa type A, the rest are a valid travel document to enter not only into Belgian territory but also to free move within the Schengen area.

The electronic foreigner's card replace the paper residence permit for both EU nationals and non-EU citizens. As a result, the foreigner also gain access to Belgian e-Government⁴⁵. The specific types of resident permit issued for Belgian authorities are;

- *Resident permit A*⁴⁶ is a resident permit issued to a non EU national with a limit resident permit in Belgium⁴⁷. This is a valid travel document within the Member States of the Schengen area. It allows the holder to enter visa-free in the Schengen Member States as far as the holder fulfil the conditions to enter into the territory of the State and possess a valid passport⁴⁸.
- *Resident permit B*⁴⁹ is a resident permit issued to a non EU national with an unlimited resident permit in Belgium⁵⁰. This document is a valid travel document that allows the holder to enter visa-free into the Members States of Schengen area, as long as, the

⁴⁰ In case that the country of origin of the traveler does not count with a Belgian Embassy or Consular Post, applicant is requested to contact the closer Embassy or Consular, normally placed in the neighbored country.

⁴¹ It only allows the holder to transit in the international zone of the airport.

⁴² A maximum of 90 days.

⁴³ Longer than 3 months but not exceeding 6 months. Then a resident permit will be requested.

⁴⁴ As indicate in the website of Belgian Federal Foreign Affairs Services <http://diplomatie.belgium.be/en/services/travel_to_belgium/visa_for_belgium/>.

⁴⁵ As set out in the website of e-I.D., the electronic identity card with a wide range of possibilities <http://eid.belgium.be/en/find_out_more_about_the_eid/the_electronic_identity_documents/the_foreigners_card>.

⁴⁶ The so-called 'A card' listed in the Annex 6 of the Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of aliens / Arrêté royal du 8 October 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers/ Koninklijk besluit betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen. *Moniteur Belge / Belgisch Staatsblad* 27 October 1981.

⁴⁷ According to the Royal Decree of 8 October 1981 can be issued to the foreigner worker, employee or self – employer (art. 25), to the foreigner that has the limited resident permit right under humanitarian reasons (art. 25), to the foreigner that is authorized to stay for a limited period of time in Belgium for medical reasons, to the foreigner that has obtained a residence permit on the base of a family reunification (art. 25-26), to the foreigner who has obtained a residence permit on the bases to follow higher education, to the foreigner who has been declared victim of human traffic offenses (art. 110*bis*), to the foreigner who holds an status of long-time resident –CE in other EU Member State (art. 110*quinquies*), to the foreign minor unaccompanied (art. 110*undecies*).G. AUSSEMS, op. cit. (n. 23), pp. 7-8.

⁴⁸ G. AUSSEMS, op. cit. (n. 23), pp. 7-8.

⁴⁹ The so-called 'B card' listed in the Annex 6 of the Royal Decree of 8 October 1981.

⁵⁰ According to what is established in the Royal Decree of 8 October 1981 can be issued to; the foreigner who has an unlimited resident permit on the basis of a discretionary decision made by the Belgian Foreigners Office, to the foreign who has obtained a family reunification with a third country national who has an unlimited resident permit in Belgium (art. 33), to the foreigner who has an unlimited resident permit on the basis of medical reasons (art. 32), to the foreigner recognized as a refugee in Belgium (art. 76), to the foreigner who is a beneficiary of a subsidiary protection, to a foreigner who has been declared victim of human traffic offenses (art.110*bis*) and to a to the foreign minor unaccompanied. G. AUSSEMS, op. cit. (n. 23), pp. 8 – 9.

holder also have a valid passport and fulfil the prerequisites set out by the State in which (s)he aims to enter in⁵¹.

- *Resident permit C*⁵² is a resident permit issued to a non EU national with an unlimited resident permit in Belgium⁵³. It is a valid travel document that allows the holder to enter visa-free into the Member States of the Schengen area, as far as, the holder possess a valid passport and fulfil the conditions set out by the State in which (s)he aims to enter in⁵⁴.
- *Resident permit D*⁵⁵ is a resident permit issued to a non EU national with an unlimited resident permit in Belgium. The foreigner must have had a legal and continuous residence in Belgium for at least 5 years and have sustainable, regular and sufficient livelihoods. This document is a valid travel document which allows the holder to enter visa-free into the Member States of the Schengen area, as long as, the holder possess a valid passport and fulfil the conditions set out by the State in which (s)he aims to enter in⁵⁶.

Other resident permits. The so called '*E card*' or *the registration certificate*⁵⁷ issued to EU national who confirms a declarative right to stay in Belgian territory⁵⁸. This document will be issued to the EU worker (employee or self-employer), to the EU citizen beneficiary of sufficient resources from a health insurance, to the EU citizen who has obtained the right of family reunification with another EU citizen and to the EU citizen who is subscribed in an educational establishment in order to follow his/her studies. This card, is a valid travel document within the Member States of the Schengen area, as far as, the holder possess a valid I.D. or passport and fulfil the prerequisites to be entitled to enter in the State⁵⁹.

The so called *E+ card* or the *certificate of permanent residence*⁶⁰, issued to EU citizen who has a permanent resident permit for more than 3 months⁶¹. This document is also a valid travel document which allows the holder enter visa-free in the Member States of the Schengen

⁵¹ G. AUSSEMS, op. cit. (n. 23), pp. 8 – 9.

⁵² The so-called 'C card' or I.D. for foreigners listed in the Annex 7 of the Royal Decree of 8 October 1981.

⁵³ According to what is established in the Royal Decree of 8 October 1981, this document can be issued to; the foreigner member of a family of a third country national who hold the right to reside in Belgium unlimited (art. 30) and to a foreigner with an unlimited resident permit on the bases of a legal and uninterrupted residence in Belgium for at least 5 years (art. 30). G. AUSSEMS, op. cit. (n. 23), pp. 9 – 10.

⁵⁴ G. AUSSEMS, op. cit. (n. 23), pp. 9 – 10.

⁵⁵ The so-called 'D card' or the long-term resident permit – CE listed in the Annex 7 *bis* of the Royal Decree of 8 October 1981. G. AUSSEMS, op. cit. (n. 23), pp. 10-11.

⁵⁶ G. AUSSEMS, op. cit. (n. 23), pp. 10-11.

⁵⁷ Listed in the Annex 8 of the Royal Decree of 8 October 1981.

⁵⁸ The EU citizen will have the automatic right to reside in Belgium if (s)he meets the conditions set out in article 40 of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens / Loi du 15 Décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Wet betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen. *Moniteur Belge / Belgisch Staatsblad* 31 December 1980. The Law entered into force the 1 July 1981.

⁵⁹ G. AUSSEMS, op. cit. (n. 23), pp. 11-12.

⁶⁰ Listed on Annex 8bis of the Royal Decree of 8 October 1981.

⁶¹ Article 55 of the Royal Decree of 8 October 1981.

area, as long as the holder possess a valid I.D. or passport and fulfil the conditions set out by the State in which (s)he aims to enter in⁶².

The *resident card of an EU citizen family member or F card*⁶³, issued to non-EU nationals who are family members of an EU citizen. This document confirms a declarative right to reside of a non EU citizens in Belgian territory⁶⁴. This document is also considered as a valid travel document which allows the holder enter visa-free in the Member States of the Schengen area, as far as, the holder holds a valid I.D. or passport and fulfil the conditions set out by the State in which (s)he aims to enter⁶⁵.

The *F+ card or the permanent resident card*⁶⁶, issued to a non-EU citizen who is a family member of an EU citizen. The beneficiary of this card must have a confirmed permanent residence right in Belgium. It is recognized as a valid travel document within Schengen area without a visa and as long as the holder possess a valid I.D. or passport and fulfil the conditions established by the State in which (s)he aims to enter in⁶⁷.

The *European Blue Card or H card*⁶⁸, issued to non-EU nationals who have limited residence permit in Belgium. The foreigner is employed in a high qualified work. This card is also a valid travel document that allows the holder to enter visa-free into the Member States of the Schengen area as long as (s)he holds a valid I.D. or passport and fulfil the conditions established by the State in which (s)he aims to enter in⁶⁹.

The *identity certificate for children under 12 years old*⁷⁰. This document is issued to the person who exercises the parental authority of a child under 12 years. It is considered a valid travel document that allows the child to enter visa-free into the Member States of the Schengen area. As a prerequisite it is also necessary that the child holds a valid I.D. or passport (or is in the passport of the parents) and that the conditions set out by the State in which the parents and the children aim to enter in⁷¹.

The abovementioned information is listed in the PRADO database, thus so far the information is still up to date.

⁶² G. AUSSEMS, op. cit. (n. 23), p. 12.

⁶³ Listed in Annex 9 of the Royal Decree of 8 October 1981.

⁶⁴ According to what is established in article 40bis and 40ter of the Royal Decree of 8 October 1981 every family member of an EU citizen will have the resident permit immediately if some conditions are met.

⁶⁵ G. AUSSEMS, op. cit. (n. 23), p. 13.

⁶⁶ Listed in Annex 9bis of the Royal Decree of 8 October 1981.

⁶⁷ G. AUSSEMS, op. cit. (n. 23), p. 14.

⁶⁸ Listed in Annex 6bis of the Royal Decree of 8 October 1981.

⁶⁹ G. AUSSEMS, op. cit. (n. 23), pp. 14-15.

⁷⁰ The so-called Model 2 listed in the Royal Decree of 10 December 1996 on the various identity documents for children under twelve / Arrêté royal du 10 Décembre 1996 relatif aux différents documents d'identité pour les enfants de moins de douze ans / Koninklijk besluit betreffende de verschillende identiteitsdocumenten voor kinderen onder de twaalf jaar. *Moniteur Belge / Belgisch Staatsblad* 20 December 1996. The Royal Decree enter into force the 1 January 1997.

⁷¹ G. AUSSEMS, op. cit. (n. 23), p. 15.

Question 2 – Domestic follow-up rules to the main EU instrument.

- ✓ *Were any specific measures enacted in your country to give further effect to the main EU instrument regulating travel documents, i.e. Regulation 2252/2004/EC?*

If so, please identify the relevant act(s)/law(s) and describe their location within the domestic legal hierarchy.

According to the Belgian prevailing monist system the European law has a direct effect in Belgium. Nonetheless, Belgium has adopted some instruments given a further effect to the main EU instruments regulating travel documents. It must be noticed that Belgium was more than three years delayed in introducing biometric measures in its travel documents. For this reason the Commission took Belgium to the European Court of Justice⁷² for failing to issue biometric passports with fingerprints⁷³. Nonetheless, the following measures have been introduced in Belgium in order to give further effect to the Regulation 2252/2004/EC;

- Law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens.
- Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of aliens.
- Royal Decree of 10 December 1996 on various identity documents for children under twelve⁷⁴.
- Law of 25 March 2003 amending the Law of 8 August 1983 organizing a National Register of natural persons and the Act of 19 July 1991 relating to population registers and identity cards and amending the Act of 8 August 1983 organizing a registry national individuals⁷⁵.
- Ministerial Order of 26 March 2003 determining the model of the basic document for the implementation of the electronic identity card⁷⁶.
- Royal Decree of 5 June 2004 determining the system of rights of access and rectification of electronic data registered on the identification card and the

⁷² ECJ, hereinafter.

⁷³ As extracted from the site of the European Commission <http://europa.eu/rapid/press-release_IP-12-1247_fr.htm>.

⁷⁴ Arrêté royal du 10 Décembre 1996 relatif aux différents documents d'identité pour les enfants de moins de douze ans / Koninklijk besluit betreffende de verschillende identiteitsdocumenten voor kinderen onder de twaalf jaar. *Moniteur Belge / Belgisch Staatsblad* 20 December 1996. The Ministerial Order entered into force the 1 January 1997.

⁷⁵ Loi du 25 Mars 2003 modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques et la loi du 19 juillet 1991 relative aux registres de la population et aux cartes d'identité et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques / Wet tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen en van de wet van 19 juli 1991 betreffende de bevolkingsregisters en de identiteitskaarten en tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen. *Moniteur Belge / Belgisch Staatsblad* 28 March 2003. The Ministerial Order entered into force the 7 April 2003.

⁷⁶ Arrêté ministériel du 26 Mars 2003 déterminant le modèle du document de base en vue de la réalisation de la carte d'identité électronique / Ministerieel besluit tot bepaling van het model van basisdocument met het oog op het opmaken van de elektronische identiteitskaart. *Moniteur Belge / Belgisch Staatsblad* 28 March 2003. The Ministerial Order entered into force the 7 April 2003.

information contained in the population register or the National Register of natural persons⁷⁷.

- Royal Decree of 1 September 2004 amending the Royal Decree of 25 March 2003 on transitional measures concerning the electronic identity card⁷⁸.
- Royal Decree of 13 February 2005 determining the date of entry into force and the regime of right to examine the authorities, organizations and persons who have consulted or updated the information contained in the population register or the National Registry of Persons physical⁷⁹.
- Royal Decree of 18 October 2006 on the electronic identity document for Belgian children under twelve⁸⁰.
- Royal Decree of 7 December 2006 setting the specifications and the procedure for registration of reading equipment for the electronic identity card and amending the Royal Decree of 13 February 1998 concerning the specifications of playback devices of the identity card social⁸¹.
- Law of 15 May 2007 entrusting the Sectoral Committee of the National Register jurisdiction to allow access to information of the waiting register and ID cards register⁸².

⁷⁷ Arrêté royal du 5 Juin 2004 déterminant le régime des droits de consultation et de rectification des données électroniques inscrites sur la carte d'identité et des informations reprises dans les registres de population ou au Registre national des personnes physiques/ Koninklijk besluit tot vaststelling van het stelsel van de rechten tot inzage en verbetering van de gegevens die op elektronische wijze opgeslagen zijn op de identiteitskaart en van de informatiegegevens die zijn opgenomen in de bevolkingsregisters of in het Rijksregister van de natuurlijke personen. *Moniteur Belge / Belgisch Staatsblad* 21 June 2004. The Royal Decree entered into force the 1 July 2004.

⁷⁸ Arrêté royal du 1er Septembre 2004 modifiant l'arrêté royal du 25 mars 2003 portant des mesures transitoires relatives à la carte d'identité électronique / Koninklijk besluit tot wijziging van het koninklijk besluit van 25 maart 2003 houdende overgangsmaatregelen in verband met de elektronische identiteitskaart. *Moniteur Belge / Belgisch Staatsblad* 15 Septembre 2004. The Royal Decree entered into force the 15 September 2004.

⁷⁹ Arrêté royal du 15 Février 2005 déterminant la date d'entrée en vigueur et le régime du droit de prendre connaissance des autorités, organismes et personnes qui ont consulté ou mis à jour les informations reprises dans les registres de population ou au Registre national des personnes physiques / Koninklijk besluit tot vaststelling van de datum van inwerkingtreding en van het stelsel van het recht tot kennisname van de overheden, instellingen en personen die de informatiegegevens die zijn opgenomen in de bevolkingsregisters of in het Rijksregister van de natuurlijke personen hebben geraadpleegd of bijgewerkt. *Moniteur Belge / Belgisch Staatsblad* 28 February 2005. The Royal Decree entered into force the 28 February 2005.

⁸⁰ Arrêté royal du 18 Octobre 2006 relatif au document d'identité électronique pour les enfants belges de moins de douze ans / Koninklijk besluit betreffende het elektronisch identiteitsdocument voor Belgische kinderen onder de twaalf jaar. *Moniteur Belge / Belgisch Staatsblad* 31 October 2006. The Royal Decree entered into force the 31 October 2006.

⁸¹ Arrêté royal du 7 Décembre 2006 fixant les spécifications et la procédure d'enregistrement des appareils de lecture pour la carte d'identité électronique et modifiant l'arrêté royal du 13 février 1998 relatif aux spécifications des appareils de lecture de la carte d'identité sociale / Koninklijk besluit tot vaststelling van de specificaties en registratieprocedure van de leesapparatuur voor de elektronische identiteitskaart en tot wijziging van het koninklijk besluit van 13 februari 1998 houdende specificaties van de leesapparatuur voor de sociale identiteitskaart. *Moniteur Belge / Belgisch Staatsblad* 12 January 2007. The Royal Decree entered into force the 12 January 2007.

⁸² Loi du 15 Mai 2007 confiant au comité sectoriel du Registre national la compétence d'autoriser l'accès aux informations du registre d'attente et du registre des cartes d'identité / Wet waarbij de bevoegdheid om toegang te verlenen tot de informatiegegevens van het wachtregister en van het register van de identiteitskaarten toevertrouwd wordt aan het sectoraal comité van het Rijksregister. *Moniteur Belge / Belgisch Staatsblad* 8 June 2007. The Law entered into force the 18 June 2006.

- Royal Decree of 18 January 2008 amending the Royal Decree of 25 March 2003 on transitional measures concerning the electronic identity card⁸³.
- Royal Decree of 1 October 2008 amending the Royal Decree of 25 March 2003 on identity cards⁸⁴.
- Ministerial Order of 3 March 2009 concerning the decision to the widespread introduction of electronic identification document for Belgian children under twelve years⁸⁵.
- Ministerial Decree of 15 March 2013 fixing the rates of remuneration dependent municipalities to issue electronic identity cards, electronic identity documents for Belgian children under twelve and cards and residence documents issued to nationals foreigners, the annex was amended by ministerial Order of 27 March 2013⁸⁶.
- Royal Decree of 22 October 2013 amending the Royal Decree of 10 December 1996 on various identity documents for children under twelve⁸⁷.
- Belgian Consular Code of 21 December 2013.
- Royal Decree of 24 February 2014 executing article 6.6 of the Law of 19 July 1991 relating to population registers, identity cards, alien cards and residence documents and amending the Act of 8 August 1983 organizing a national registry of individuals⁸⁸.

⁸³ Arrêté royal du 18 Janvier 2008 modifiant l'arrêté royal du 25 mars 2003 portant des mesures transitoires relatives à la carte d'identité électronique/ Koninklijk besluit tot wijziging van het koninklijk besluit van 25 maart 2003 houdende overgangsmaatregelen in verband met de elektronische identiteitskaart. *Moniteur Belge / Belgisch Staatsblad* 28 February 2008. The Royal Decree entered into force the 9 March 2008.

⁸⁴ Arrêté royal du 1 October 2008 modifiant l'arrêté royal du 25 mars 2003 relatif aux cartes d'identité / Koninklijk besluit tot wijziging van het koninklijk besluit van 25 maart 2003 betreffende de identiteitskaarten. *Moniteur Belge / Belgisch Staatsblad* 7 November 2008. The Royal Decree entered into force the 1 September 2008.

⁸⁵ Arrêté ministériel du 3 Mars 2009 portant la décision de procéder à l'introduction généralisée du document d'identité électronique / Ministerieel besluit houdende beslissing om het elektronisch identiteitsdocument voor Belgische kinderen onder de twaalf jaar veralgemeend in te voeren pour les enfants belges de moins de douze ans. *Moniteur Belge / Belgisch Staatsblad* 11 March 2009.

⁸⁶ Arrêté ministériel du 15 mars 2013 fixant le tarif des rétributions à charge des communes pour la délivrance des cartes d'identité électroniques, des documents d'identité électroniques pour enfants belges de moins de douze ans et des cartes et documents de séjour délivrés à des ressortissants étrangers, dont l'annexe a été modifié par arrêté ministériel du 27 mars 2013 / Ministerieel besluit van 15 maart 2013 tot vaststelling van het tarief van de vergoedingen ten laste van de gemeenten voor de uitreiking van de elektronische identiteitskaarten, de elektronische identiteitsdocumenten voor Belgische kinderen onder de twaalf jaar en de kaarten en verblijfsdocumenten, afgeleverd aan vreemde onderdanen, waarbij de bijlage is gewijzigd bij ministerieel besluit 27 maart 2013. *Moniteur Belge / Belgisch Staatsblad* 21 and 28 March 2013.

⁸⁷ Arrêté royal du 22 Octobre 2013 modifiant l'arrêté royal du 10 décembre 1996 relatif aux différents documents d'identité pour les enfants de moins de douze ans / Koninklijk besluit tot wijziging van het koninklijk besluit van 10 december 1996 betreffende de verschillende identiteitsdocumenten voor kinderen onder de twaalf jaar. *Moniteur Belge / Belgisch Staatsblad* 21 March 2014. The Royal Decree entered into force the 31 March 2014.

⁸⁸ Arrêté royal du 24 Février 2014 exécutant l'article 6.6, de la loi du 19 juillet 1991 relative aux registres de la population, aux cartes d'identité, aux cartes d'étranger et aux documents de séjour et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques / Koninklijk besluit tot uitvoering van artikel 6, § 6, van de wet van 19 juli 1991 betreffende de bevolkingsregisters, de identiteitskaarten, de vreemdelingenkaarten en de verblijfsdocumenten en tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen. *Moniteur Belge / Belgisch Staatsblad* 28 February 2014. The Royal Decree entered into force the 10 March 2014.

- Ministerial order of 28 February 2014 regarding the closing of the I.D. card renewal period⁸⁹.
- Ministerial Regulation of 19 April 2014 on the issuance of passport.

Regarding the hierarchy within the Belgian legislation, the first place is reserved to the Belgian Constitution and the international regulations/rules⁹⁰. The legislative rules (law⁹¹, decrees⁹² and orders⁹³) are the highest legal standards after the Constitution and the international regulations. The legislative norms are followed by the Royal Decrees⁹⁴ or Executing Decrees. The Royal Decrees are followed by the provincial regulations⁹⁵ and the lower norms are the local regulations⁹⁶. It is important to note the binding nature of the hierarchy of legal norms in Belgium, i.e., the lower authority must always meet the standards set by the higher authority.

Question 3 – Conformity with applicable standards and requirements

- ✓ *Please verify whether the standards and requirements for (issuing) passports and travel documents adhered to in your country comply with those prescribed in Regulation 2552/2004/EC, including the requirements and pointers contained in its Annex.*

In particular:

- *Do the standards and requirements imposed refer to the mandatory inclusion of fingerprints in an interoperable format?*
- *Did your Member State designate a specific body for printing passports and travel documents? Please check whether that name was subsequently communicated to the Commission, and also indicate if the same body was designated by another Member State.*
- *Have the technical specifications referred to in Article 2 of the Regulation been published, or are they (in line with Article 3) kept confidential?*
- *Have the biometric features prescribed by the Regulation been integrally introduced for the passports and travel documents issued in your country?*

(Note that, in line with Article 1(3) of the Regulation, this question does not pertain to identity cards issued by Member States to their nationals, or to temporary passports and travel documents having a validity of 12 months or less.)

⁸⁹ Arrêté du 28 Février 2014 ministériel relatif à la clôture de la période de renouvellement des cartes d'identité/ Ministerieel besluit betreffende het afsluiten van de vernieuwingsperiode van de identiteitskaarten. *Moniteur Belge / Belgisch Staatsblad* 6 March 2014. The Ministerial Order entered into force the 31 March 2014.

⁹⁰ There is a big internal debate regarding which of these norms might prevail if the Constitution or the international rules. On the one hand, a part of the Belgian doctrine consider that the Constitution is the superior norm and on the other hand, other part of the Belgian doctrine consider that the international rules have a higher value than the Constitution.

⁹¹ The Belgian laws are issued by the Federal authority.

⁹² The decrees are issued by the Communities and the Regions.

⁹³ The orders are issued by the Region of Brussels-Capital.

⁹⁴ The Royal Decrees can be issued either by the King or the Federal Government or the Communities or Regional Governments.

⁹⁵ They are issued by the provincial authorities.

⁹⁶ The local regulations are issued by the community.

Since late 2013 Belgium issues biometric passport, for Belgian living in Belgium and abroad, that fulfil the standards and requirements imposed by the Regulation 2252/2004/EC, including interoperable fingerprints among other information, and this because the direct applicability of the Regulation in Belgium. The standard requirements contained in the Regulation are respected by Belgium authorities while issuing the biometric passports. It is compulsory the inclusion of fingerprints among of other important information. As indicated in article 53 of the Belgian Consular Code the passport have to include the following information; the identity of the holder (his/her full name), date and place of birth, sex, the nationality or recognition as a refugee or stateless person, the issuing authority, the period of validity, the holder's photograph⁹⁷, the signature of the holder⁹⁸, two fingerprints of the holder, passport number, the I.S.O. code of the issuing country, the serial number of the chip and the letter 'P' for the type of document in accordance with I.C.A.O. recommendations.

In line with the provisions of the Regulation 2252/2004/EC, there are two exceptions regarding the obligation of including the fingerprints in the biometric passports⁹⁹; for children under 12 and in case of physical and permanently impossibility to take fingerprints, such as, certain fingers are missing or disable or there is a malformation of the hand¹⁰⁰, etc. The Belgian passport takes a format of a booklet of 35 or 60 pages, depending on the necessities of the applicant. Later than the rest of EU Member States, finally Belgium has introduce all the biometric features required by the Regulation. It is difficult to give an overview about the complementary security technical measures that Belgium has introduced in the process of printing and issuing the e-passport and travel documents because the technical specifications for e-passports are secret, as established in article 67 of the Belgian Consular Code.

Regarding the printing body, since the 1st May 2014 the new biometric passports, as well as the e-I.D. and e-cards for foreigners, are printed by the private Belgian specialized company Zetes¹⁰¹. This company has not been designated by other Member States in order to elaborate the new biometric passports. However, Zetes produces the Ivorian and Gambian biometric e-passports¹⁰².

⁹⁷ It is necessary that the face is completely exposed and the photo meet the standards requirements set by the International Aviation Organization (I.C.A.O., hereinafter). It is possible to consult the official I.C.A.O. standards in the following link <http://diplomatie.belgium.be/en/binaries/Photos_ICAO_9303_EN_tcm312-237668.pdf>.

⁹⁸ If the holder cannot sign, then it must be expressly indicated in the passport or in the travel document 'Belgian with exempt'.

⁹⁹ As indicated in the website of Belgian Foreign Affairs, Foreign Trade and Development Cooperation Services <http://diplomatie.belgium.be/en/services/services_abroad/belgian_passport/biometric_passport/belg_in_belgie/exceptions/>.

¹⁰⁰ In this particular case, a passport without fingerprints but containing the rest of information and security measures is issued.

¹⁰¹ The company won the call for tenders' process in August 2013. Zetes will cover a period of 5 years printing the Belgian e-passports, <<http://fr.zetes.be/>>.

¹⁰² As indicated in the website of Zetes <<http://peopleid.zetes.com/en/solution/epassports>>.

Question 4 – Validity

- ✓ *What is the general period of validity of (the different types of) travel documents that are in common usage in your country?*
- ✓ *Is prior (individual) warning issued to the bearer with regard to imminent expiry, and the need to renew the document(s) in question (e.g. via letter or e-mail notice)?*

DOCUMENT	VALIDITY
I.D.	
e-I.D.	10 years ¹⁰³
Kids-I.D. ¹⁰⁴	3 years ¹⁰⁵
e-I.D. for Belgians living abroad ¹⁰⁶	6 years ¹⁰⁷
e-I.D. for Belgians living abroad	10 years ¹⁰⁸
e-I.D. for Belgians living abroad	30 years ¹⁰⁹
The provisional or temporary I.D.	2 months ¹¹⁰
I.D. for foreign Diplomatic or Consular Agent	Between 3-5 years.
I.D. for administrative and technical personnel of the Diplomatic and Consular Mission.	Between 3-5 years.
Special I.D. for private personnel of the Diplomatic or Consul.	The period vary depending on the function of the holders.
Special I.D. for children under 5.	Between 1-2 years.
PASSPORT ¹¹¹	
Adult passport	7 years
Children passport ¹¹²	5 years
Supplementary passport	6 months.
Belgian Diplomatic Passport or Service Passport ¹¹³	5 years or during the time that the holder exercises his/her activity.

¹⁰³ Since the 1 March 2014 as indicated by the Belgian Federal Public Interior Service in its website <<http://www.ibz.rn.fgov.be/fr/documents-didentite/eid/>>.

¹⁰⁴ For children under 12.

¹⁰⁵ As provided in the website of the Belgian Federal Public Interior Service in its website <<http://www.ibz.rn.fgov.be/fr/documents-didentite/eid/>>. It is important to note that the I.D. issued under the Royal Decree of 10 December 1996 on the various identity documents for children under twelve in force until 31 October 2006 had a validity of 2 years since the deliverance as established in its article 8.

¹⁰⁶ This e-I.D. remains valid even in the case that the holder moves to an area falling under the jurisdiction of a different embassies or consulates or return to Belgium. On the contrary, the non-electronic I.D. issued abroad remain valid within the jurisdiction of the embassy that has issued it but it become invalid when the holder moves to the jurisdiction of another embassy or consulate or returns to Belgium. As derived from the web site of the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Services <http://diplomatie.belgium.be/en/services/services_abroad/identity_card_for_belgians/>.

¹⁰⁷ When the holder is between 12 and 18 years old.

¹⁰⁸ When the holder is between 18-75 years old.

¹⁰⁹ When the holder is over 75 years.

¹¹⁰ As indicated in the website of e-I.D. <http://eid.belgium.be/en/find_out_more_about_the_eid/card_lost_or_stolen/>.

¹¹¹ However, it is has to be noticed that if the passport has been issued without biometric data, i.e., before the entry into force of the biometric measures the validity still remains in 5 years for the adults.

¹¹² Under 18.

¹¹³ As indicated in article 2 of the Ministerial Decree of 23 August 2000 on the creation of a diplomatic and service passport.

VISAS	
Visa type A	Only the necessary time to transit the international zone of the airport
Visa type C	3 months
Visa type D	More than 3 months but a maximum of 6 months.
OTHER TRAVEL DOCUMENTS	
Travel document for recognized refugees	2 years
Travel document for recognized stateless persons	2 years
Travel documents to foreigners that cannot have access to their home administration in Belgium.	2 years
VISAS/ RESIDENT PERMIT RELATED DOCUMENTS (THE FOREIGNERS CARD).	
A card	The validity depends on the conditions under it has been delivered
B card	5 years
C card	5 years
D card	5 years
E card	5 years
E+ card	5 years
F card	5 years
F+ card	5 years
H card	13 months
Identity certification for minors under 12	Maximum of 2 years or until the child reach the age of 12.

Regarding the renewal of the e-I.D. when the expiration period of validity is close, the holder will receive a notification card in the post box warning him/her about this fact. The holder must always report personally to the Registry Office of his/her permanent resident before the expiration date that is indicated in the card received in the post¹¹⁴. This procedure is also applicable to the kids-I.D.

On the contrary passports do not have a specific renewal procedure, in fact, the holder cannot start a renewal procedure as such. Normally, the procedure an application procedure for a new passport should be followed. Thus, it is the holder the one who must be careful to ask on time for a new passport before the expiration of the previous one if (s)he is planning to travel to a country in where is necessary¹¹⁵.

Regarding the foreigners card (including resident permit related document), the procedure will differ as what it is has to be renewed is the resident permit. However, the card holder is required to report to the local administration of his/her residence place to seek a

¹¹⁴ As indicated in the website e-I.D. <http://eid.belgium.be/en/find_out_more_about_the_eid/the_electronic_identity_documents/the_eid>.

¹¹⁵ As extracted from the website of Belgian Foreign Affairs, Foreign Trade and Development Cooperation <http://diplomatie.belgium.be/en/services/services_abroad/belgian_passport/new_passport>.

renewal of his/her residence permit between 30 and 45 days prior to the expiration date of the document¹¹⁶.

¹¹⁶ As established in article 33.1 of the Royal Decree of 8 October 1981.

PART II – ACQUISITION, RENEWAL AND LOSS

Introduction

Next, we take interest in collecting information with regard to the acquisition process, on where and how the documents are to be procured, and at what price. Equally worthy of note will be any possible deviations applied in the situation of renewal or loss, including withdrawal, since these might prove more protracted, costly, or otherwise pose hindrances. We first focus on the situation for own nationals and then consider the situation for resident EU citizens.

Question 5 – Venue, costs and timeframe.

- ✓ *At which office in your country are travel documents ordinarily to be obtained? Please include in your answer details on whether or not an application can be made digitally (even when the documents still have to be picked up in person).*
- ✓ *Which costs are associated with the acquisition of the different types of travel documents issued in your country? Please distinguish between the various categories, where appropriate, and convert any sums in other currencies, where applicable, to EUR.*
- ✓ *What is the standard timeframe for delivery (i.e. between formal application and actual obtaining of the document in question)? Please also indicate if special limitations apply in case of urgency, and what additional costs (if any) are incurred in such cases.*

In Belgium the e-I.D., foreigner's e-cards, e-passports and travel documents are ordinarily obtained in the city halls of the municipalities in which the applicant has his/her habitual residence and are registered as citizen of this municipality. In case of the foreigner's e-card the local authorities refer the file to the Belgian Federal Foreigners Office, which at the end decides the type of resident permit that should be issued to the foreigner. In this regard, no distinction is made between EU citizens and non-EU citizens.

The e-I.D., e-passports and travel documents are also issued to Belgian citizen living abroad. In these cases the request is made via the Belgian Diplomatic or Consular Offices of the jurisdiction in which they have their habitual residence, as long as they are registered as a Belgian living abroad in the Consulates or Embassy corresponding to the jurisdiction of their residence. In case that the Belgian citizens would like to lodge their application with another Belgian Embassy or Consulate or with a provincial passport administrations when transiting Belgium, a prior authorization from their Embassy or Consulate is required. It must be noticed, that in case the Belgian citizens are not registered neither in a municipality nor in an

Embassy or Consulate they cannot apply for an ordinary passport. Only in certain cases of emergency they will be provided by a provisional passport¹¹⁷.

The application of the Belgian travel documents has to be done in person by the applicant due to the collection of biometrical information from the applicant. However, there exists some exceptions. For example, an application of a Belgian e-I.D. abroad can be done by sending the application / request assistance to the Embassy or Consulate (in which (s)he is registered) of the jurisdiction of the domicile of the Belgian citizen abroad. With the application the applicant must enclosed the following documents¹¹⁸;

- the application form, completed and signed,
- the proof of payment of the 20 €
- a I.D. photo that meets the standards listed on the SPF requirements.

In order to avoid any delay, the applicant needs to indicate the desired main language in which (s)he would like to have issued the e-I.D.¹¹⁹ and the signature of the applicant in the appropriate box¹²⁰.

When an application of a kids-I.D. is done in front a local authority the following documents are needed; the proof of the exercise of the parental authority over the child, the child has to go to the city hall with the parents, tutor or authorized person and a recent photo of the child has to be provided¹²¹. If the application is made in front of a Belgian Embassy or Consulate, it can be done just by sending the application and the following documents; the complete and signed application form, the proof of payment of the 10 € and an I.D. photo which meets the I.C.A.O. standards conditions. In order to avoid unnecessary delays it is necessary to indicate the main language in which (s)he would like to have issued the e-I.D. and if the child is 6 years or more, an indication if the parents want to used certificates or no¹²².

The foreigners e-cards application procedure must be requested in front of a local authority, more precisely, city halls in where they have their habitual residence. Tdocuments to be handled to the local authorities depends on the type of resident permit that the citizen is applying for and also if the applicant is an EU citizen or a non-EU citizen. However, article 2

¹¹⁷ As it is indicated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation <http://diplomatie.belgium.be/en/services/services_abroad/belgian_passport/application/>.

¹¹⁸ As indicated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation <http://diplomatie.belgium.be/fr/Services/services_a_letranger/carte_identite_pour_belges_etranger/demande_ei_d/>.

¹¹⁹ It is must be noticed that in Belgium three languages are official: Dutch, French and German.

¹²⁰ In case of minors, when the child can write, (s)he must register his/her signature in the box. If for medial/physical reasons, the applicant is unable to sing, an explanation to this extent must be joint with the application.

¹²¹ As expressed in the website of the Belgian Federal Public Interior Service <<http://www.ibz.rrn.fgov.be/fr/documents-didentite/kids-id/>>.

¹²² As illustrated in the web site of Belgian Foreign Affairs, Foreign Trade and Development Cooperation <http://diplomatie.belgium.be/fr/Services/services_a_letranger/carte_identite_pour_belges_etranger/demande_kids-id/>.

of the Royal Decree of 8 October 1981 prevent a fee to cover the administrative costs in order to get this resident permits. To this regards the following fees will be charged¹²³;

- Foreigner under 18; not fees will be paid to this extent;
- Foreigner over 18;
- in case the application is made under the circumstances referred to in article 1er/1, 1er/2, 3°, 4° and 6° of the Law of 15 December 1980 the fee is 160 €
- if the application is referred to a resident permit referred in article 1er/1, 1er/2, 3° and 4° but made by a foreigner referred in article 10.1.6°¹²⁴ of the Law of 15 December 1980, the fee is free;
- when the application is for a resident permit referred in article 1er/1, 1er/2. 3° and 4° of the Law of 15 December 1980 made by a family member of a foreigner who enjoys the status of a long-term resident in another Member State, as long as, they were part of his/her household in the other Member State, the fee is indicated on 60 euros;
- if the application is refer to a resident permit referred to in article 1er/1, 1er/2.6° of the Law of 15 December 1980 is made by a single disabled child over the age of 18, who provides a statement from a doctor approved by the Belgian diplomatic or consular post, stating that due to his/her disability (s)he is unable to meet his/her own needs; the administrative costs are free;
- the resident permit application referred to in article 1er/1, 1er/2.7° of the Law of 15 December 1980 are charged with a fee of 160 €
- the resident permit applications referred to in article 1er/1, 1er/2. 1°, 2°, 5° 9° and 10° of the Law of 15 December 1980 are charged with a fee of 215 €
- in case the resident permit application referred to in article 1er/1, 1er/2.8° of the Law of 15 December 1980 the applicant is charged with a fee of 60 €

The payment¹²⁵ of the fees has to be done prior to start the procedure as a proof of payment has to be enclosed to the rest of the documentation required¹²⁶. In case of passports, all Belgian applicant, regardless if they are in Belgium or abroad, must report in person to the administration to register their biometric data. The following data is stored in the chip of the passports¹²⁷:

- Alphanumeric data: name, date of birth, etc.
- Fingerprints of two fingers.
- Photo (taken directly in the Belgian Embassies or Consulates and in the municipalities are scanned.
- The signature of the holder.

¹²³ The amount detailed are indicate per application and per person.

¹²⁴ This article refers to single handicap persons.

¹²⁵ The payment procedure and bank account are also detailed in the article 1er/1 of the Royal Decree of 8 October 1981.

¹²⁶ As indicated in article 1er/2 of the Royal Decree of 8 October 1981.

¹²⁷ As illustrated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation <http://diplomatie.belgium.be/fr/Services/services_a_letranger/biometrie/>.

In case of the Schengen visas application the applicants must carry out the application in person in order to have their biometric data registered. The following data of the applicant are recorded¹²⁸:

- Alphanumeric data; name, date of birth.
- Fingerprints of all 10 fingers.
- Photo (taken directly at Belgian Embassies and Consulates).

With regard to the costs associate to the different travel documents some distinctions have to be done. Respecting the e-I.D., it must be distinguished whether the I.D. is issued in Belgium or abroad. In case that the e-I.D., Kids-I.D. or foreigners e-card is issued in Belgium, the Ministerial Decree of 15 March 2013 on fixing the rate of remuneration payable to the municipalities for issuing electronic identity cards, electronic documents for Belgian children under twelve and documents issued to foreign national¹²⁹, in its article 2 fix a rate of payable remuneration¹³⁰. The basic prices are:

- e-I.D.: 15,00 €
- kids-I.D.: 6,00 €
- foreign e-card: 10 €¹³¹

However, this is a basic fix prices, the municipalities have total discretion to charge an extra municipal tax. Consequently, in some municipalities the citizen has to pay extra costs and in another (s)he has to pay only the fix price for the same type of document¹³². The fix prices that local authorities have to charge to the citizen for issuing travel documents are indexed each year by the Federal Government and communicated to the municipalities via circular. The prices are also higher if the issuance of the I.D. or kids-I.D. is made by an urgent procedure and also the discretionarily of the different city halls regarding the possibility to charge a local extra taxes is present in these kind of procedures. However the Ministerial Decree of 15 March 2013 establish a minimum fix price in case of urgent procedure¹³³;

- For e-I.D the following prices are applicable;
 - Option 1, extreme urgent procedure with transports made by a private company = 180,00 €

¹²⁸ Ibid.

¹²⁹ The Annex to this Ministerial Decree was amended by the Ministerial Order of 27 March 2013 regarding the automatically modification of the rate of remuneration, annexed to the Decree, each year on the 1st January since the 1st January 2014.

¹³⁰ The Ministerial Decree fixing the prices of e-I.D., Kids-I.D. and foreigners e-cards is accessible at <http://www.ibz.rn.fgov.be/fileadmin/user_upload/fr/cartes/eid/legislation/20130315-am-mb.pdf>.

¹³¹ This price will be paid apart from the administrative fees charged by law to foreigners whit regard the issuance of resident permit.

¹³² The list with the prices of the municipalities for issuing travel documents are accessible at the website of the Belgian Federal Public Interior Service <<http://www.ibz.rn.fgov.be/fr/documents-didentite/eid/tarifs/>>.

¹³³ A detailed list of the different prices charged by the municipalities is accessible at the website of the Belgian Federal Public Interior Service <<http://www.ibz.rn.fgov.be/fr/documents-didentite/kids-id/tarifs/>>.

- Option 2, urgent procedure with a transport operated by a private company = 116,00 €
 - Option 3, urgent procedure with a transport operated partially by the municipality = 86,00 €
 - Option 4, urgent procedure with a transport made by the municipality = 57,00 €
- For the kids-I.D.:
 - Option 1, extreme urgent procedure with transports made by a private company = 173,00 €
 - Option 2, urgent procedure with a transport operated by a private company = 109,00 €
 - Option 3, urgent procedure with a transport operated partially by the municipality = 84,00 €
 - Option 4, urgent procedure with a transport made by the municipality = 51,00 €

In case that the e-I.D. or the Kids-I.D. is issued by a Belgian Embassy or Consulate the prices is of 20 €for the e-I.D. and 10 €for the kids-I.D.¹³⁴.

Regarding the price of Belgian passport, prices are different depending on where the passport is issued (Belgium or abroad), on how many pages of the booklet and on the application procedure (normal or urgent). In case the passport is issued by the local authorities, the price of the passport includes the federal tax¹³⁵, production costs and sometimes the municipalities can determine an extra local tax. In any case the prices are¹³⁶;

Prices	Minor (- 18)	Legal Age (+ 18)
32 pages (normal procedure)	35 €	65 €
32 pages (urgent procedure)	210 €	240 €
64 pages	210 €	240 €

When the passport are requested and issued by a Belgian Embassy or Consulate the applicant must pay the in the local legal currency of the place where the Embassy or Consulate is located. In this cases the price might vary depending on the exchange rate. However the prices are¹³⁷;

¹³⁴ As indicated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service <http://diplomatie.belgium.be/fr/Services/services_a_letranger/carte_identite_pour_belges_etranger/demande_ei_d/>.

¹³⁵ The federal tax is not charged for passports issued to minors (under 18), but the production cost must be paid and any other local taxes.

¹³⁶ The prices are taken from the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service <http://diplomatie.belgium.be/fr/binaries/prix_passeport_belge_tcm313-122220.pdf>.

¹³⁷ The list of prices is taken from the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service <http://diplomatie.belgium.be/fr/binaries/prix_passeport_belge_tcm313-122220.pdf>.

Prices	Minor (- 18)	Legal Age (+ 18)
32 pages	35 €	75 €
64 pages	210 €	240 €

The diplomatic and service passports are issued and manufacturing for free¹³⁸. In case the Belgian citizen, who apply for a passport through an Embassy or a Consulate, and has request the storage of his/her data during 5 or 7 years, can have a duplicate¹³⁹ of his/her passport at reduced price. In this case the prices will be as follows¹⁴⁰;

- Defective or with an error passport: no fee is charged.
- Theft or loss: 79 €for adults and 35 €for minors.

Regarding ‘handling fee’ of visas, the amount that the applicant has to pay, is due for processing the visa application file, not for the visa itself¹⁴¹. So the costs are¹⁴²:

- Short stay visa or visa type C: 60 €
- Long stay visa or visa type D: 180 €

A handling reduced fee of 35 € for short-term visas is applied to: children between 6 and 12 years and citizens of countries with which the EU has concluded visa relaxation agreement.

Nonetheless, there are some exceptions for the handling fee of short-term visa and thus the procedure is free for: the spouse, children up to 21 years and dependent parents of a Belgian national or other EU citizens and Swiss, for children under 6 years, for schoolchildren, students, postgraduate students, accompanying teachers, the researchers from third countries traveling to conduct scientific research according to what is established in the Regulation 2005/761/EC, representatives of non-profit organization or aged under 25 years and participating in seminars, conferences, sports, cultural or educational event organized by non-profit organizations, holders of diplomatic and service passports. The following persons are exempted of paying the handling fee for long-term visas: the spouse, children up to 21 years and dependent parents of a Belgian national or other EU citizens and Swiss and the holders of diplomatic and service passports¹⁴³.

¹³⁸ As it is established in article 2 of the Ministerial Decree of 23 August 2000 on creation of the diplomatic and service passports.

¹³⁹ The duplicate can be request in case of loss, theft, administrative error or defective passport.

¹⁴⁰ As indicated in the website of the Belgian Federal Public Interior Services <http://diplomatie.belgium.be/fr/Services/services_a_letranger/passeport_belge/passeport_biometrique/belge_a_let_ranger/conservation_donnees/>.

¹⁴¹ It must be note that in case of cancelation of the trip by the applicant or refusal of issuance of the visa, the amount paid is not refundable.

¹⁴² The fees has to be paid in local currency at the Embassy or Consulate upon the visa application. So the amount might vary depending the exchange rate of the currency of the country.

¹⁴³ As illustrated in the website of the Belgian Federal Foreign Affairs Services <http://diplomatie.belgium.be/fr/Services/venir_en_belgique/visa_pour_la_belgique/kostprijs_voor_behandeling_van_het_visumdossier/>.

Regarding the time framework of issuance of I.D.'s and foreigners' e-cards, the average time limit is of 3 weeks starting from the date on which the municipality has referred the signed basic document containing the request to the company responsible for manufacturing the e-I.D. cards, i.e., Zetes¹⁴⁴. Nonetheless, the time frame for obtaining a foreign e-card is a bit longer, but the time to handle the card is the same, i.e., 3 weeks starting from the moment that the city hall submit the file to the company responsible for manufacturing the foreigners e-cards. Consequently, the whole procedure for obtaining the resident permit, i.e. foreigners e-card can take from 3 to 6 months more or less.

In any event, an emergency procedure is also available for Belgian nationals aiming to obtaining an e-I.D. This emergency procedure can be especially useful in case of loss or theft of the e-I.D. or either because of the proximity of the expiration date of the previous I.D. and the impossibility of wait due to a planned trip to an EU country or to another country which accepts the electronic identity card as a travel document. The emergency procedure allows the citizens, who submit the application in the municipality before the 15 h, to get a new e-I.D. card within the 2 next working days if an extremely urgent procedure is used, otherwise the time frame is of 3 working days. It has to be noted that the use of an emergency procedure might have extra costs for the applicant, as indicated in the Ministerial Decree of 15 March 2013¹⁴⁵.

For the deliverance of the passport issued by Belgian local authorities the ordinary time frame is of 5 working days since the collection of the passport request by the company responsible for manufacturing it, i.e., Zetes. Consequently, the deliverance depends on the frequency of collection of the passport request in the Belgian city halls¹⁴⁶. In case that the passport is requested via an emergency procedure¹⁴⁷, the time frame for delivery the passport is one working day after the request is done to the local authority. The application is sent via fax to the manufacturing centre before the 15 h¹⁴⁸.

For the deliverance of Schengen visas requested by non-EU citizens in Belgian Embassies or Consulates, the time frame is quite long, normally between 2 and 4 weeks, depending on the frequency that the Consulates and Embassies send the diplomatic bag to the Belgian Foreigners Office placed in Brussels¹⁴⁹.

¹⁴⁴ As indicated in the website of the Belgian Federal Public Interior Services <<http://www.ibz.rn.fgov.be/fr/documents-didentite/eid/faq/>>.

¹⁴⁵ As illustrated in the website of the Belgian Federal Public Interior Services <<http://www.ibz.rn.fgov.be/fr/documents-didentite/eid/faq/>>.

¹⁴⁶ Normally they are collected twice per week.

¹⁴⁷ Which includes additional costs.

¹⁴⁸ As indicated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service <http://diplomatie.belgium.be/fr/Services/services_a_letranger/passeport_belge/delai_de_delivrance/>.

¹⁴⁹ As illustrated in the website of the IBZ.be <https://dofi.ibz.be/sites/dvzoe/FR/Apropos/Pages/Le_delai_de_traitement_d_une_demande_de_visa.aspx>.

Question 6 – Deviations in case of renewal or loss.

- ✓ *Does a different procedure apply in case of an application for renewal of an earlier document, rather than a first-time acquisition? If so, please highlight the specific deviations, and also indicate whether a reduced tariff is applicable in such cases.*
- ✓ *Does a different procedure apply in case of an application due to loss of a previous document, rather than a first-time acquisition? If so, please highlight the specific deviations, and indicate whether a surcharge imposed for such cases.*

The procedure to renew an I.D. does not differ from the procedure of acquisition of the I.D. the first time. As indicated in article 1 of the Royal Decree of 25 March 2003 on I.D., every Belgian citizen over 15 must be provided with an I.D. In order to acquire an I.D., currently an e-I.D., the following documentation is required;

- the proof of the exercise of the parental authority,
- to go with the child to the City Hall or authority in which the I.D. aims to be issued and,
- to provide the Belgian authority with a recent photo of the child.

Normally, the renewal procedure will be done when the expiration date of I.D. card is close and a previous advice is sent to the Belgian citizen in order to proceed with the application of renewal on time. However, the renewal might be done in the following cases¹⁵⁰;

- when the holder wants a card in a language other than that in which it has been issued, due to the holder has moved to another municipality placed in another language region,
- when the physical aspect of the holder has changed so much that is not the same than the one of picture which appears in the document,
- when the document is damaged,
- when the holder change name or surname,
- when the holder change of gender.

The Belgian citizen must go in person to the Population Service of his/her town of residence. The citizen must to provide with a photo which meets the standards requirements set by the I.C.A.O. and with the I.D. that will be renewed¹⁵¹. The prices charged by the city hall are the same as those charged when issued the I.D. for the first time, in case of being over 18 years. In case that the first I.D. was issued when the holder was a minor, then a little difference in prices can be appreciate at the renewal, as regulate in the Ministerial Decree of

¹⁵⁰ As established in the article 5 of the Royal Decree of 23 March 2003 on identity cards. It must be noted, that in case of renewal the older document is returned to the local authority. The document must be returned also in case of loss of Belgian nationality or deceased of the holder.

¹⁵¹ In case that the old I.D. card cannot be provided due to a loss or theft or destruction of the card, the Belgian citizen needs to have another document proving his identity.

15 March 2013 with the discretionary of certain municipality to charge with an extra local tax. The price has to be paid at the moment of the issuance of the e-I.D.¹⁵²

In case of loss, theft or destruction of the Belgian e-I.D., the procedure differ a bit from the one of the I.D. issuance for the first time. In such a situation, the holder is required to make a declaration in the shortest possible time to the municipal administration of his habitual residence or to the nearest police station about this fact¹⁵³. A proof of the declaration is provided to the holder and the I.D. is renewed after investigating the circumstances of the loss, theft or destruction of the document¹⁵⁴. The applicable prices for the renewal in this circumstances are the same as the one applicable for the issuance of the I.D. established by the Ministerial Decree of 15 March 2013.

The renewal procedure of the kids-I.D. is the same as the acquisition for the first time. It can be renewed in case of loss, theft or destruction and upon the request made by of the person(s) exercising the parental authority over the child or at the request of a foster parent or the head of the institution home in which the child is cared¹⁵⁵. The prices of the renewal of a kids-I.D. are the same as those established for issuing the document for the first time¹⁵⁶, as regulated in the Ministerial Decree of 15 March of 2013. It must be noted that the loss of kids-I.D. does not imply the obligation for the parents to ask for a new card or even renew it because the kids-I.D. is not a compulsory document. Therefore, if kids-I.D. is lost, thieve or destructed the person exercising the parental authority over the Belgian child under 12 is required to make a declaration in the shortest possible time to the local administration of the habitual residence¹⁵⁷. In case of theft, it is nevertheless advisable to complain to the police¹⁵⁸.

The renewal procedure of the different resident permit for foreigner, which currently are all issued in the format of a foreigners e-card, is established in the article 13 of the Law of 15 December 1980 and in the articles 33 to 38 of the Chapter IV of the Royal Decree of 8 October 1981. The article 13 of the Law establishes not only the duration of the resident permit issued under the articles 9, *9bis* and 10 of the Law, but also indicates the conditions under which the permit is extended or renewed and those in which it may be terminated. The main reason to not have renewed or extended the resident permit is that the foreigner does not

¹⁵² As indicated in the website of the Belgian Federal Public Interior Services <<http://www.ibz.rn.fgov.be/fr/documents-didentite/eid/faq/>>.

¹⁵³ As established in article 6 of the Royal Decree of 25 March 2003. In case that the declaration made in this way is not possible, the article 6 indicates to report to the Helpdesk referred to in article *6ter* of the Law of 19 July 1991 relating to population registers and identity cards and amending the law of 8 August 1983 organizing a National Register of physical persons.

¹⁵⁴ Upon the report of the loss, theft or destruction of the holder the electronic functions of the e-I.D. are automatically suspended.

¹⁵⁵ As indicated in the General Instructions on identity documents for children under twelve years, 'kids-I.D.', and coordinated version of 21 March 2014. The complete text is accessible at <http://www.ibz.rn.fgov.be/fileadmin/user_upload/fr/cartes/kids/instructions/IG-Kids-ID-08102015.pdf>.

¹⁵⁶ Including the cases of urgent procedure.

¹⁵⁷ As established in article 3 of the Royal Decree of 18 October 2006 on the electronic identity document for Belgian children under 12 years.

¹⁵⁸ As indicated in the website of the Belgian Federal Public Interior Services <<http://www.ibz.rn.fgov.be/fr/documents-didentite/kids-id/faq/>>.

fulfil the conditions set out for obtaining the resident permit or that the foreigner used false or misleading information or false or falsified documents or is engaged in fraud or other illegal means, which were decisive for obtain the resident permit¹⁵⁹.

The procedure of renewal of the foreigner e-card (resident permit) is compulsory when¹⁶⁰;

- the validity has expired,
- in case of damage, loss or destruction of the document,
- if the photo no longer represents the face of the holder,
- the fingerprints have deteriorated to such an extent that the comparison with those reordered on the residence permit is impossible,
- change of identity,
- change of nationality or status.

Between the 45th and 30th day prior to the expiration date of the residence permit, EU blue card, etc., the foreign citizen is required to report to the local administration of his/her habitual residence in Belgium in order to seek a renewal of his/her resident permit¹⁶¹. This obligation is suspended for; a foreigner admitted to a treatment in a hospital or similar, for a foreigner arrested and detained in a prison or social defence, a foreigner of 75 years or older¹⁶² and a foreigner authorized to stay on the basis of article 10 or 10*bis* of the Law of 15 December 1980. The same prices as for the issuance of the new foreigner e-I.D. is applicable in these circumstances.

As deduced from the abovementioned the same procedure is applicable when a loss, theft or destruction of the foreigner e-card than for the renewal. However, in case of loss, theft or destruction it is necessary to do a declaration of loss, theft or destruction of the document to the police in where the loss, theft or destruction of the document has been noted¹⁶³.

Regarding the renewal of the Belgian passports, they cannot be renewed so the procedure is the same as for the issuance a passport for the first time, i.e., upon the expiration date the Belgian citizen might ask for a new passport¹⁶⁴. Consequently, the fees paid for the passport are the same as those paid for the one issued for the first time. In case of loss, theft or destruction of the passport, as happened with the e-I.D. or foreigner e-card, a declaration must be done to the local municipality, Belgian Consulate or Embassy or to the Belgian or foreign police, depending in where the loss, theft and destruction of the passport has been noted, in order to get a new passport¹⁶⁵. Nonetheless, in the case of lost, theft and destruction of the

¹⁵⁹ 'Chapitre VI : Durée de Séjour, Prorogation et renouvellement du titre, fin du séjour (art.13)', in: S. BODART, J. JAUMOTTE, D. DUSHAJ and C. VERBROUCK, 'Droit des Étrangers', data base: StradaLex.be., pp. 175-177.

¹⁶⁰ Article 36 of the Royal Decree of 8 October 1981.

¹⁶¹ Article 33 of the Royal Decree of 8 October 1981.

¹⁶² However if (s)he has to travel, a renewal of the resident permit has to be seek.

¹⁶³ Article 36*bis* of the Royal Decree of 8 October 1981.

¹⁶⁴ Regardless the age of the applicant.

¹⁶⁵ As indicated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service <http://diplomatie.belgium.be/en/services/services_abroad/belgian_passport/loss_or_theft/>.

passport, some alteration in the prices can be noticed, as indicated in the answer to question 5. Thus, if the applicant has opted for the storage of his/her biometrical data for a period of 5 or 7 years, depending on the age of the applicant, then a duplicate of this passport can be obtained at a reduced price, otherwise, a new passport has to be requested.

Question 7 – Grounds for withdrawal.

- ✓ *On which grounds are public authorities in your Member States entitled to withdraw a person's passport?*
- ✓ *Are these grounds for withdrawal considered compatible with the substantive and procedural requirements imposed by Articles 27 and following (public policy, public security, public health, access to judicial remedies etc.) of Directive 2004/38/EC?*

(Note that this question does not pertain to withdrawal of nationality, which is a different matter, and that ID cards normally cannot be withdrawn.)

The grounds on which the public authorities are entitled to withdraw a passport are the same as the ones used by Belgian authorities to deny the issuance of a passport¹⁶⁶. This grounds are¹⁶⁷;

- the data concerning the nationality and identity of the holder are inaccurate,
- the holder is subjected to a judicial limitation of his/her freedom,
- the holder is in an ongoing investigation of an offence set out by the article 199bis of the Belgian Penal Code,
- the holder is subject to measures provided by law restricting the freedom of movement for the protection of national security or public safety or the maintenance of public order, for prevention of criminal offenses, of the health or moral protection of rights and freedoms of others.

In addition, Belgian passports and travel documents may also be withdrawn and invalidate if the holder presents a clear substantial risk for the maintenance of the public order or the protection of nationals citizens or public security¹⁶⁸. Moreover, coinciding with the reinforcement of Belgium in the fight against the terrorism, the Belgian Government have passed three projects of law which contain, within other measures, the temporary withdrawal of the passport and other documents of a person considered suspicious to support terrorist organizations¹⁶⁹.

The abovementioned grounds fall under the scope of application of article 27 of the Directive 2004/38/EC. Belgium also has contemplated a procedure compatible with the article

¹⁶⁶ As set out in article 65/1 of the Belgian Consular Code forward to article 62 of the same Code.

¹⁶⁷ These grounds are set out in article 62 of the Belgian Consular Code.

¹⁶⁸ As established in article 65/1 of the Belgian Consular Code.

¹⁶⁹ As extracted from the website of the Belgian First Minister, Charles Michel, <<http://www.premier.be/fr/lutte-contre-le-radicalisme-et-le-terrorisme-le-gouvernement-approuve-trois-projets-de-loi>>.

27 of the Directive when the Minister refuse to issue or decide to withdrawal the Belgian passport¹⁷⁰. To this extent the Minister fixes a consultation procedure with the administrative, judicial and police authorities in order to examine if there exists any legal measure limiting the holder freedom of movement. These authorities shall communicate to the Minister if there exists any of these limitations. They will provide the Minister also with a list of Belgians citizens, recognized refugees and recognized stateless person whose freedom of movement is limited by law or a judicial measure on the base of protecting the national security, the maintenance of public order or the protection the public health.

Question 8 – Acquisition by non-nationals at public offices

- ✓ *Which types of travel documents, if any, can be obtained at public offices in your Member State by nationals of other Member States?*
- ✓ *If nationals of other Member States can indeed obtain such documents at public offices in your Member State, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)*
- ✓ *With regard to the applicable procedure, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. longer/shorter timeframes)*
- ✓ *With regard to the associated costs, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. surcharges)*
- ✓ *Is it mandatory for long-term residing EU citizens to have registered their presence with the relevant authorities beforehand (in line with Article 8(1) of Directive 2004/38/EC, if implemented in your Member State) before they are able to apply for said documents?*
- ✓ *Is information on the acquisition of the relevant travel documents adequately made available in (at least the main) other EU languages?*

As indicated when answering the first question of the present questionnaire, the different travel documents that EU citizen can obtain in the public offices of Belgium are the following¹⁷¹;

- the special I.D. issued under the Royal Decree of 30 October 1991¹⁷² to a foreign Diplomatic or Consular Agent, to the administrative or technical personnel of the Diplomatic and Consular Missions and special I.D. for children under 5.
- the E-card or the registration certificate (currently contained in the foreigners e-card),

¹⁷⁰ The procedure is established in article 63 of the Belgian Consular Code.

¹⁷¹ All these documents are, as indicated, currently issued in the format of the foreigner e-card.

¹⁷² The Royal Decree does not make any difference between EU nationals and non-EU nationals.

- the E + card or the certificate of permanent residence (currently contained in the foreigners e-card),
- the identity certificate for children under 12 years old,
- travel documents issued to refugees recognized by Belgium, stateless persons recognized by Belgium and non-Belgian citizens not recognized as a refugees or stateless in Belgium and who do not have access to their national administration or international organization recognized competent to issue them this kind of documents¹⁷³.

Regarding the I.D. card or passports, the EU national has to approach their home country Embassies or Consulates placed in Belgium in order to get them, as Belgian authorities only issued I.D. and passport to Belgian nationals. However, as indicated in the answer given to question 1, some exceptions are applicable. Belgian authorities might issue travel documents for non-Belgian nationals who benefit from an indefinite right of residence if;

- they do not have access to their home country Embassy or Consulate, or other national or international organization recognized competent or able to issue passports or travel documents,
- they are refugees recognized by Belgium and,
- they are stateless persons recognized by Belgium.

In these cases there are no general differences with regard the appropriate procedure to obtain the abovementioned documents. The most important difference that can be appreciate is that EU citizen must enclose a proof of his/her identity to the application. Another difference, or problem is the fewer location of foreign Embassies and Consulates around Belgium. Regarding the cost attached to the application and issuance of the documents, smalls differences can be appreciated as shown in the question 5, to which I refer to.

Nonetheless, it must be stressed that while the timeframe for the issuance of the foreigner e-cards is the same as the issuance of a Belgian I.D., the procedure to complete the file for an EU citizen is longer¹⁷⁴ than from a Belgian citizen. The delay is justified in part for the obligation set out by the article 42.2. of the Law of 15 December 1980 which indicates that the resident right of an EU citizens is recognized by a registrations statement. They are subscribed in the foreigners register or in the register of the population. However, as indicated in article 41*bis* of the Law of 15 December 1980, every EU citizen¹⁷⁵ who comes to Belgium for a stay not exceeding three months and does not stay in a tourism establishment obliged to travellers control legislation, are required to report their presence on the territory to the municipal administrations of the place in which (s)he is staying. The notification must be done within ten working days upon entry in Belgium, unless they belong to a category of

¹⁷³ As established in article 57.3 of the Belgian Consular Code.

¹⁷⁴ Based on personal experience as an EU citizen moving to Belgium the time frame is between 3 and 6 months, depending on the municipality willing to established in Belgium.

¹⁷⁵ And his/her family members who join him/her.

foreigners that are exempted from these obligations¹⁷⁶. If the presence is not reported an administrative fine of 200 € might be imposed. Consequently, to notify and register the presence in the country is compulsory before being able to apply for any documentation in Belgium. It is important to note, that Belgium is a very administrative and regulated country so the fact of not being in possession of the resident permit delimit a lot the daily life of the EU citizen willing to establish in Belgium. As an example, without the resident permit, the foreigner e-card, is not possible to subscribe in Belgium a health insurance or even to open a bank account.

Most of the main institutional websites of Belgium provides the information in the three main languages of the country, i.e., Dutch, French and German. Nonetheless, some of these institutional websites contain the information also in English, but the information provided in English is much less than in the official languages of the countries. Depending on where the information comes some differences in the information accessible in French or Dutch can be appreciated. For example, if the information comes from an institutional website of the Dutch speaking region, the main information will be accessible in Dutch and a brief translation is made in French. On the other way round, if the information is provided by an institutional website of the French speaking region, all the information is provided in French and the translation made into Dutch is more light regarding the content. To this extent it will be desirable that all the relevant information would be available in the main EU language, as for EU citizens is very difficult to cope with this languages 'problems/barriers' when trying to address the regional and local authorities.

Question 9 – Policy for extension and renewal in consular representations in other Member States

- ✓ *Does your Member State adhere to a uniform general policy with regard to the extension or renewal of travel documents at its consular representations abroad, or do the conditions and procedures applied differ per country?*
- ✓ *Compared to nationals resident in your own country, do any additional conditions and requirements apply at your Member State's consular representations in other countries, when nationals resident in those other countries seek to obtain or renew travel documents?*
- ✓ *Are reduced rates applicable for specific categories of persons (e.g. costs waived for recipients of social benefits)?*
- ✓ *Which information and certificates are nationals of your own country expected to adduce at consular representations in other EU Member States when they there wish to apply for travel documents for a newborn child?*

¹⁷⁶ The foreigners exempted from this obligation are EU citizens that are in a hospital or arrested or under custody of the Belgian social services.

- ✓ *Are authenticated translations required, or are the original copies, accompanied by informal transcripts, considered as equivalent and acceptable for the issuing of such travel documents?*

The Belgian policy on extension and renewal of travel documents at its consular representations is very uniform due to its regulation by the Belgian Consular Code¹⁷⁷. Therefore, the documents to be submitted, the conditions and the timeframe for the issuance of the passport and other travel documents are the same. However, some differences in the procedural of obtaining and renewal of travel documents can be appreciate. For example, in the procedure of renewal an e-I.D. or kids-I.D. abroad apart from the application form filled and signed and the proof of payment of the fees, it will be necessary to expressly indicate the desired language in which the applicant would like to have his/her I.D. issued. This specification is not needed when the application of an e-I.D. or Kids-I.D. renewal is done in territory of Belgium, i.e., in one of the local authorities.

The ‘renewal’ passport procedure by the Belgian Consulates or Embassies abroad proceed in the same way as the issuance of a new passport. The ‘renewal’ can be made for three main reasons; when it is no longer valid or usable because of its expiry or the expiration date is close or, when the photo of the passport does not represent the reality anymore and when the passport has been lost, stolen or destructed. The procedure for a renewal of a passport is different depending on the person who applies for. If it a passport for a minor under 6 the following documentation should be submitted to the Consulate or Embassy in where the child is enrolled in the Registry of Belgium living abroad; the complete printed application form¹⁷⁸, a photo in colour of the child and a proof of identity and the consent of the parents. In some cases, the Consular and Diplomatic Office may ask for some additional documents before the issuance of the passport.

In the rest of the cases the print and complete application form for a passport should be submitted to the Consulate or Embassy in which the Belgian citizen is registered, in order to apply, and thus renew the passport. Accompanying the application form an I.D. of the child or any other document proving the identity should be submitted, as well. It is also necessary to enclose the previous passport (in case of date expiry) or a certificate stating that the passport has been stolen or lost¹⁷⁹.

One of the main differences with the procedure of applying for a new passport and the renewal procedure is the collection of the fingerprints. The first time that the passport is

¹⁷⁷ The main policy follows by the Belgian Consulates placed abroad is also accessible at the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service in which all the services offered abroad for Belgian citizens are detailed <http://diplomatie.belgium.be/fr/Services/services_a_letranger/>.

¹⁷⁸ This application form have to be signed either by the parent/s and by the child since the moment (s)he is able to write.

¹⁷⁹ These certificates must be issued by the police services of the location in where the loss or theft occurred or of the applicant’s place of residence. It must be noted that since late 2008, Belgian citizens are able to declare a lost or stolen passport themselves through the *docstop* just by calling to a phone number. As indicated in the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service <http://diplomatie.belgium.be/en/services/services_abroad/belgian_passport/required_documents/>.

issued, the finger prints of two fingers have to be collected, as of the age of 12 years old. However, Belgian citizens have the possibility to record their biometric data for 7 years or 5 years for minors. This unique service offered by Belgium allows a citizen who has lost or whose passport has been stolen to renew or apply for a duplicate of his/her passport without returning to the position to apply for a new passport and without the necessity to pay the entire fees for the new passport¹⁸⁰. This system allows the Belgian citizens to choose what suits them better, depending on the remaining validity period and the inconvenience posed to him to have to go again to a Consulate or Embassy¹⁸¹. This special possibility only applies when a duplicate or a renewal is done based on a stolen or lost passport. When the duplicate expires a new passport application must be done following the entire procedure, i.e., including the collection of fingerprints.

Regarding the prices charged by consulates when renewing or issuing travel documents for Belgian nationals, no reduction of fees is applied. For e-I.D. a standard cost of 20 € is charged and for kids-I.D. 10 €¹⁸². In cases of passports, the prices are the same as indicated in question 5 when delivery a new passport, no reduction is applicable for any other reason than the issuance of a duplicate as far as the passport holder had opted out for storing his/her biometric data for a period of 7 or 5 years. In this case, the price of the passport includes a federal tax and a production costs¹⁸³. As it was indicated, the federal tax is not charged when the passport is issued to minors but the production costs must be paid. When the application for a passport is issued in an Belgian Embassy or Consulate, the price of passport has to be paid in local legal currency of the foreign country.

The application procedure for travel documents for a new born child in a Consulate or Embassy has already been explained and it will defer on the type of document willing to obtain, if an I.D. or a passport. The clue to obtain travel documents for child abroad is the registration of the child in a Belgian Consular Population Register. As indicated in article 39 of the Belgian Consular Code, children under twelve who are registered in a Belgian consular population register, might be issued with an identity card. Thus, in order to be registered in a Belgian Consular Population Register first of all the person must be able to register and for this the following prerequisites are needed; to be Belgian citizen, to not be registered in a population register of a Belgian municipality and to proof that the main residence fall with the area jurisdiction of the Embassy or Consulate. Children must also meet an extra requirement, they must be registered where one of their parents has been registered. It is worthy to say that

¹⁸⁰ This means that the fees are calculated in proportion of the remaining years of validity of the passport and thus the citizen will pay less than if a new passport has to be issued.

¹⁸¹ As extracted from the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service
<http://diplomatie.belgium.be/fr/Services/services_a_letranger/passeport_belge/passeport_biometrique/belge_a_l_etranger/faq/>.

¹⁸² The fees charged to Belgian citizens by their Consulates abroad for the issuance and renewal of I.D. and Kids-I.D. is different, a bit more expensive, than the basic fees charges for Belgian citizens for the same type of administration but done it inside the country.

¹⁸³ That are higher if the passport is required urgently or if the booklet of the passport has 64 pages instead of 32 pages.

a child have the Belgian nationality¹⁸⁴ when is born abroad and some of this conditions are met; one of the parent(s) is born in Belgium or in the territory under Belgian sovereignty or administration, one of the parent(s) is Belgian and has made a declaration of the birth in order to attribute the Belgian nationality to the child within the 5 years from the birth or, the Belgian parent(s) and the child does not have another nationality when reaching the age of 18.

In order to fulfil the application of registration for the new born abroad the parent(s) have to present the following documents¹⁸⁵; (i) a model 8 form, (ii) a Belgian I.D., (iii) the questionnaire of inscription into an Embassy duly filled, dated and signed, (iv) a copy of a passport, (v) a copy of a long-term visa or local residence permit or local identity card. The nature of this document will differ according to the local situation of the place in where the Embassy or Consulate is located. Nonetheless, Belgian Embassies and Consulates will legalized¹⁸⁶ this documents. Normally, within the legalization process, it will be necessary a sworn translation of the document or maybe the document will need the apostille in order to produce effects in Belgium.

Once the Registration of the child is done, the application for obtaining either the I.D. or passport for minors is more easy. When the application aims to obtain a kids-I.D. the following documentation should be provided; the application form filled and signed, the proof of payment of the fess, a photo of the child, an indication in which of the Belgian official language might be issued, a parent(s) consent or the person(s) exercising the parental authority over the child.

In case that the parents wants to obtain a passport the following documentation has to be presents with the application form:

- an kids-I.D. or any other certificate which proof the identity of the child,
- a photo of the child,
- the consent of the parents (both) the person(s) exercising the parental authority over the child has to be expressed.

Moreover, depending on the Consulate or Embassy in where the travel documents for the new born aim to be obtained some extra documents might be required.

¹⁸⁴ As established in article 8 of the Code of the Belgian Nationality / Code du 28 Juin 1984 de la nationalité belge / Wetboek van de Belgische nationaliteit. *Moniteur Belge / Belgisch Staatsblad* 12 July 1984. The Code entered into force the 22 July 1984.

¹⁸⁵ The list of documents have been extracted from the website of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service <http://diplomatie.belgium.be/en/services/services_abroad/registration/how_to_register/>.

¹⁸⁶ The procedure to legalized foreign documents is set out in article 30 of the Belgian Code of Private International Law / Loi du 16 Juillet 2004 portant le Code de droit international privé/ Wet houdende het Wetboek van internationaal privaatrecht. *Moniteur Belge / Belgisch Staatsblad* 27 July 2004. The Code entered into force the 1 October 2004.

Question 10 - Acquisition for newborn children of non-nationals at domestic public offices.

- ✓ *Is it possible for non-nationals to obtain travel documents for a newborn child at the domestic public offices in your Member State? If not, skip to Question 9.*
- ✓ *If so, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)*
- ✓ *If the possibility is there, which information and certificates are non-nationals expected to adduce at national public offices when applying for travel documents for a newborn child?*
- ✓ *If the possibility is there, is the timeframe for the issuing of such travel documents noticeably longer or shorter, as compared to when own nationals apply for travel documents for their children?*

To obtain proper travel documents, i.e., I.D. and passport, for a non-Belgian national new born the parents have to address their home country Embassies or Consulates located in Belgium¹⁸⁷. This is sometimes difficult as the location of foreign Embassies or Consulates in Belgium is mainly in Brussels. But non-national new born cannot have access to a Belgian kids-I.D. or passport, as a general rule.

Nonetheless, certain ‘travel documents’ can be obtained at Belgian local authorities. The most relevant is the identity certificate for foreign children under 12, no distinction is made for EU children and non-EU children. The only specification is that is issued to non-Belgian children.

The legal framework of the issuance of this document fall under the scope of application of the Royal Decree of 10 December 1996 on identity documents for children under twelve and of the Royal Decree of 22 October 2013amending the Royal Decree of 10 December 1996 on the various identity documents for children under twelve. This certificate is obtained at the municipality in where the child is registered at the time of application and it cost 2 euros¹⁸⁸. The application have to be realised by the person exercising the parental authority over the child¹⁸⁹. Although this certificate is issued to the person(s) exercising the parental authority over the child, the child is the holder of the document. As the parents can only ask for this document and keep it, this implies that the document must accompany the child

¹⁸⁷ After the *Case C-34/09 Ruiz Zambrano*, Belgian policy regarding new born foreign children in Belgian territory has been hardened. Currently, foreign parents are obliged to seek and obtain their home country nationality for their children.

¹⁸⁸ As established in article 10 of the Royal Decree of 10 December 1996.

¹⁸⁹ As set out in article 6 of the Royal Decree of 10 December 1996.

during a temporary stay with the other parent than to whom the certificate was requested to be issued. If the parent refuses to provide this document to the other parent, with whom the child resides temporarily, the local authority cannot issue to the other parent a second document for the same child. Consequently, if the parents cannot reach an agreement in, the local authorities may refer them to a competent family mediation. In the worst of the case the intervention of the Tribunal for Youngers¹⁹⁰ can be seek¹⁹¹.

The certificate is issued in a format of a white diptych¹⁹². The certificate is valid for a period of two years from its issue¹⁹³. This document can only be renewed until the child reach the age of 12, at that moment (s)he has to be provided by a regular identity document. It is important to note also that the period of validity cannot exceed the period of permit residence issued to the legal representative or parent of the child. Some difficulties can arise when the parents of a child under 12 holds a resident permit whose validity is different. In cases where the parental authority over the child is entrusted exclusively to one of them, the period of validity of the certificate is determined by the residence permit of the parent. In all other cases, the validity of the certificate is determined by that one of the resident permit of the father or the mother who has introduced alone the application to the local administration. In case that the application is lodged jointly by the father and the mother, the validity period is determined by the residence permit of whose validity is the longest¹⁹⁴. Is also required the presence of the child in the issuance of the certificate in order to allow the local authorities to verify the resemblance with the photo and the face of the child.

The identity certificate contains, besides the identification data and photo of the child, a reference of a contact person in case of emergency and other safety recommendations. It contains also the name of the municipality and date of issuance, the expiring date, the signature of the registrar of the civil office or his delegate, the 24 digits number assigned by the municipality¹⁹⁵, the parent's identity, place and date of birth and the enrolment register¹⁹⁶. This document is essential when traveling abroad and if the child does not have its own passport. However not every country will recognized this document as a travel document. An overview of the countries accepting this certificate as a travel document is available at the website of Belgian Interior Public Services¹⁹⁷.

¹⁹⁰ Tribunal de la Jeunesse /Jeugdrechtbank.

¹⁹¹ As indicated in the general instructions regarding the holding of the population registers, the full document is accessible at the website of the Belgian Public Interior Services < <http://www.ibz.rn.fgov.be/fr/documents-didentite/enfants-de-moins-de-12-ans/reglementation/instructions/>>.

¹⁹² As set out in article 7 and annex 2 of the Royal Decree of 10 December 1996.

¹⁹³ A new identity certificate has to be requested in case of change of residence or address, change or name or surname or when at the moment of the expiring date indicated in the certificate (when the child is still under 12), as established in article 7 of the Royal Decree of 10 December 1996. In case that the certificate is lost, stolen or destructed, a renewal of the certificate can be requested.

¹⁹⁴ As established in the general instructions regarding the holding of the population registers, the full document is accessible at the website of the Belgian Public Interior Services < <http://www.ibz.rn.fgov.be/fr/documents-didentite/enfants-de-moins-de-12-ans/reglementation/instructions/>>.

¹⁹⁵ Article 11 of the Royal Decree of 10 December 1996.

¹⁹⁶ As established in article 9 of the Royal Decree of 10 December 1996.

¹⁹⁷ In the following link < <http://www.ibz.rn.fgov.be/fr/documents-didentite/enfants-de-12-ans/acces-a-letranger/>>.

Finally, some documents to new born will be issued in the following cases; to refugees recognized by Belgium, stateless persons recognized by Belgium and non-Belgian citizens not recognized as a refugees or stateless in Belgium and who do not have access to their national administration or international organization recognized competent to issue them this kind of documents¹⁹⁸.

Question 11 – Travelling with minors.

Background example (fictitious)

Lena is a twelve-year old Austrian girl from Vienna, taken out by her Turkish stepfather for a mini-holiday to be spent in Istanbul. They travel by car, intending to pass through Hungary, Romania and Bulgaria along the way.

Arriving at the border between Hungary and Romania, she and her stepfather are stopped by two immigration officers, and requested to produce a written statement from Lena's mother confirming that she consents to the trip, before they are both allowed to continue their journey.

- ✓ *In addition to their own valid travel document, does your country require minors travelling alone to produce any extra (official) documents signed by their parents or legal guardian(s) authorising them to travel?*
- ✓ *In addition to their own valid travel document, does your country require minors travelling with adults who are not their legal guardian to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?*
- ✓ *In addition to their own valid travel document, does your country require minors travelling with only one parent to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?*

There is no Belgian rule imposing any extra official or non-official document signed for the parents authorising children traveling alone to travel. As well, on the other way round, there are no form or Belgian or international procedure that set the rules for parental consent for minors to travel abroad, this a domestic question and each country have its particular regulation to this respect. To this extent and in the lack of regulation the Belgian Department of Foreign Affairs, Foreign Trade and Development Cooperation Service in its website¹⁹⁹ give some advices to the parent of a Belgian child who is going to travel alone. It recommends to provide with a written consent if the child is traveling alone or with other people than them, or a close relative. In case the child will travel only with one of the parents, it is possible to

¹⁹⁸ As established in article 57.3 of the Belgian Consular Code.

¹⁹⁹

See http://diplomatie.belgium.be/fr/Services/voyager_a_letranger/informations_supplementaires/voyager_avec_des_mineurs/.

certify in writing the consent and agreement trip of the other parent and legalize the signature by the city hall²⁰⁰.

Regarding foreign children traveling alone within Belgium for touristic reasons, as the example, are subject to general entrance regulations²⁰¹ and no distinction is made in Belgian legislation between EU national minors and non-EU national minors. The general entrance regulations suggest that the minor under 16, regardless if EU-citizen or non-EU citizen, needs a valid travel document to enter in the country, such as, I.D., valid passport or any equivalent valid document. However, a foreign children is also allow to enter in Belgium without being in possession of a travel document if some of the following conditions are met; in case the child travel in the company of a parent or grandparent or legal tutor or guardian, they have the same nationality and the children is registered under the travel document coated with a valid visa, if necessary²⁰².

The same requirements are made for children traveling along for longer than 3 months as indicated in article 24 of the Royal Decree of 8 October 1981.

It is important to stress some special cases regulated under Belgian Law, no expressly for children or minor but assimilates. For example, young people traveling in a group, are allowed to enter in Belgium for a short stay not exceeding of three months only by the presentation of a valid collective passport for young people, issued in accordance with the European Agreement of 16 December 1961 on the movement of young persons on collective passports between the Member State countries of the Council of Europe²⁰³. Another example is the one of the school children who are not EU national but they resides in one Member State and they are a part of group travelling in a school trip. They are allowed to transit within Belgium for not longer than 3 months just by presenting a single list of names which conforms the common form annexed to the Decision of the Council of the European Union 94/795/JAI of 30 November 1994²⁰⁴. However, the list has to meet some conditions such as; the group is accompanied by a teacher from the school provided with a valid travel document, the Member State in which the school pupils reside has notified to the other Member States that its own list must be recognized as a valid travel document in all Member States of the European Union, the competent authority of that State has validated the list in order to confirm the residency status of the school children and their right to re-entry into its territory without any extra formality and the list has to include a recent phot of the school pupils therein mentioned who are unable to prove their identity by means of an I.D. bearing a photo.

²⁰⁰ In case that the child and the progenitor does not share the same surname a copy of the birth certificate can proof the parentage between them.

²⁰¹ As established in article 3 and 24 of the Royal Decree of 8 October 1981.

²⁰² As indicated in article 3 of the Royal Decree of 8 October 1981. This article also prevents an exception for French children under 16, who can travel alone in Belgium without a being a possession of valid travel document if they travel in the company of another person different than the one contained in the article, if they have the same nationality and the children is registered in the travel document of the adult with who (s)he travels.

²⁰³ As set out in article 6 of the Royal Decree of 8 October 1981.

²⁰⁴ As established in article 6*bis* of the Royal Decree of 8 October 1981.

PART III – INCLUSION OF BIOMETRIC DATA AND ITS EFFECTS

Introduction

Council Regulation 2252/2004/EC requires Member States to collect and store biometric data, including fingerprints, in the storage medium of passports and other travel documents, and require that such data be used for verifying the authenticity of the document or the identity of the holder. Further measures may be introduced with regard to the processing and use of such data, or requiring the inclusion of additional biometric data going beyond the scope of the Regulation. The adoption of the domestic rules concerned may have given rise to controversies, and they could potentially have had a ‘chilling effect’ on the acquisition of travel documents. This warrants further inquiry, also e.g. with regard to possibly instigated judicial or non-judicial procedures attempting to curb the discretionary powers exercised by the Member State legislature, and/or targeting the underlying EU instrument.

Question 12 – Inclusion of fingerprints (pursuant to EU law) and its possible effects.

- ✓ *Did your country already introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents before the adoption of Regulation 2252/2004/EC? If so, skip to Question 13!*
- ✓ *Were there any non-judicial objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?*
- ✓ *Were there any judicial objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?*
- ✓ *Do citizens generally experience the inclusion of biometric data in passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the adoption of the Regulation (e.g. on the number of passports issued).*

As indicated, Belgium was one of the last Member States, if not the last one, in introducing biometrical data in its travel documents for Belgian nationals, i.e., passports, even though Belgium was one of the first countries in issuing electronic passports (since 2004). It was not until the end of 2012 when some Belgian municipalities started to issue the new biometrical passport. Since the 11 April 2014, all the Belgian municipalities issue the

biometrical passport with fingerprints. The transition to the biometrical passport in the Belgian Embassies and Consulates was also made progressively.

Almost simultaneously on the adoption of the Regulation 2252/2004/EC, Belgian Program Law of 27 December 2004²⁰⁵ in its article 450 introduced a modification of the Law of 15 July 1996 amending the Law of 15 December 1980 on access to the territory, residence, establishment of foreigners in Belgium, regarding the inclusion in that law of the Chapter *VIIbis* on collection of biometric data. According to its article 30*bis*²⁰⁶ the biometrical data should be collected from; the applicant of a visa or an authorization replacing a visa or the applicant of a residence permit at a Belgian Diplomatic or Consular representative, the foreigner applicant of a resident permit²⁰⁷, the foreigner with an order to leave the territory and the foreigner subjected to a ministerial repatriation order or an expulsion.

However, the Law of 15 July 1996 amending the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and the Law of 8 July on public social assistance centres²⁰⁸, introduced, in the Law of 15 December 1980, for the first time the collection of biometrical data for foreigners in Belgium for asylum seekers. Collection of fingerprints is also done from foreigners which have entered into the Belgian territory in an illegal way or they have lost their legal right or residence but are asylum seeker²⁰⁹ and for foreigners who are subjected to a temporary protection also seeking asylum²¹⁰.

To this point, it is important to understand the inclusion of Chapter *VIIbis* in the Law of 15 December 1980, and why non distinction is made between EU citizens and non-EU citizens in article 30*bis*. To fully understand it, the explanatory memorandum of the Draft of the program Law of 9 December 2004²¹¹, has to be examined when the Minister of Interior justified the inclusion the inclusion of the different scenarios specified in article 30*bis* as indicating that the possibility to collect finger prints was limited only to asylum seekers (as established in article 51/3 of the Law of 15 December 1980). The other categories of foreigners (tourist, students, etc.) could not be legally obliged to give their fingerprints, although this represented an obstacle to the fight against fraud and terrorism. Therefore, it is proposed to insert a general chapter and article concerning the taking of biometric data of foreigners deeply inspired in article 51/3 of the Law of 15 December 1980.

²⁰⁵ Loi-programme du 27 Décembre 2004/ Programmawet. *Moniteur Belge / Belgisch Staatsblad* 31 December 2004.

²⁰⁶ As a biometrical data should be understood only the fingerprints and the photo taken directly from the Embassies or Consulates and from the municipal authorities.

²⁰⁷ Regardless for a long or short term.

²⁰⁸ Loi du 15 Juillet 1996 modifiant la loi du 15 Décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 8 juillet 1976 organique des centres publics d'aide sociale / Wet tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen en van de organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijk welzijn. *Moniteur Belge / Belgisch Staatsblad* 5 October 1996.

²⁰⁹ As established in article 74/6 of the Law of 15 December 1980.

²¹⁰ As established in article 51/3 of the Law of 15 December 1980.

²¹¹ The full text of the Draft Law, including the explanatory memorandum is accessible at <<http://www.lachambre.be/FLWB/PDF/51/1437/51K1437001.pdf>>.

With regard the framework of privacy aims regarding the collection of biometrical data is subjected to the Belgian Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data²¹². It has been the Belgian Commission on protection of the Private Life²¹³ the authority who has stressed this point. To this extent the responsible for the treatment of the biometrical data is subjected to the obligation to inform the concerned persons about the storage of the data, the estimate time for conserving this sensible data, the protection of this data and the declaration. Regarding the information to the concerned person, the responsible for the storage must inform about the data to be store, the finality of the store, the treatment given to this data, if there exist a right to access and modify the data stored, etc. The Commission also indicates that the store of the data must be done for a reasonable time frame, only for the necessary time to fulfil the purpose for which the data were collected and stored. The necessity of secure this kind of data with extra measures (legal, organizational, technical, etc.) has also been stressed by the Commission. Finally, every institution treating biometrical data should make a declaration to this extent to the Commission²¹⁴. Belgium, being awarded of the importance of the biometrical data has adopted a mix system with regard the protection of the data. When collecting biometrical data and fingerprints, either the municipality and the Belgian Embassies and Consulates, advices the applicants of the passport or travel document in order to have an informed consent to store their data. The biometrical data are store in the chip of the passport but the applicant has the possibility to store his/her data for the validity time of his/her passport.

Regarding the biometrical data collected from foreigners, article 30*bis* of the Law of 15 December 1980 established that the biometrical data are taken at initiative of the Belgian Diplomatic or Consular representative or the Minister or his delegate. Also they can be collected upon a judicial or police request. Furthermore, proceed the article, the biometrical data can only be used to the extent that they are necessary in order to establish or verify the identity of the foreigner, to examine if the foreigner is a danger for the public order or the national security and, to comply with the requirements of the European regulations and directives adopted by the Council of the European Union. The recording, processing, exploitation and transmission of biometrical data is performed under the control of the Commission for the protection of the privacy life in accordance with the Law of 8 December 1992.

²¹² Loi du 8 Décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel / Wet tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens. *Moniteur Belge / Belgisch Staatsblad* 18 March 1993.

²¹³ The main mission of the Commission is to ensure the compliance with privacy when persona data are processed. The Commission is a Federal entity, although there are also since December 2009 a Flemish audit board for the electronic exchange of administrative data, performing equivalent skills, but just a Flemish Regional level. The Privacy Commission provides assistance to both public bodies and controllers by complying with requests for preliminary informal consultation. As extracted from the website of the Commission <<https://www.privacycommission.be/fr/la-commission-vie-privee-en-quelques-mots>>.

²¹⁴ As deduced from the website of the Belgian Commission on Private Life Protection <<https://www.privacycommission.be/fr/biometrie>>. See also to this regard the Avis n.° 17/2008 of 9 April 2008, Object: Avis d'initiative relative aux traitements de données biométriques dans le cadre de l'authentification de personnes (A/2008/017), the text of this advice is available at <https://www.privacycommission.be/sites/privacycommission/files/documents/avis_17_2008_1.pdf>.

In this vein two recent advices²¹⁵ have been issued by the Belgian Commission on protection of private life:

The *advice n.º 01/2016 of 13 January 2016 on the draft Royal Decree amending the Royal Decree of 10 December 1996 concerning different identity documents for children under 12 years and amending, also, the Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of foreigners*²¹⁶. In this occasion, the Commission ended with a positive advice, regarding the protection of private data of the concerned person. However, in its advice it stressed the necessity to have a special consideration with the paragraph 11. In this paragraph the Commission draws the applicant's attention to the fact that biometric data are inserted into the foreign e-cards. It stressed that these data can only be used for the sole and exclusive purpose of verify the authenticity of the residence document and the identity of its holder²¹⁷ and thus, should be separated from other national data.

Another recent advice of the Commission is the *n.º 60/2013 of 27 November 2013 requesting an opinion on the draft law on automated processing of personal data required for Belgian passports and travel documents*²¹⁸. In this advice the Commission draws attention, within other, to the obligations contained in article 16 of the Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data, including the provision that regarding the obligation of the store contractor to ensure sufficient guarantees in respect of the technical security and organizational measures governing on how personal data is processing. To this extent the advice in its paragraph 31, in relation with the finger prints and personal data that must be stored on the chip of the passports, indicates that as regard with Belgium, the fingerprints will be stored only on the chip and will not be printed as visible to the naked eye on the passport. It is considered by the Commission non pertinent to print the biometrical data on paper given the purpose for which the fingerprints will be used.

The Commission for the Protection of the Private Life has been quite active in the providing advices regarding the treatment and store of the biometrical data, not only to the

²¹⁵ It is important to note that the advices issued by the Commission are a pre-examination of the compliance of the intended or projected rules with the Law of 8 December 1992 and the European legislation regarding the protection of personal data.

²¹⁶ Avis n.º 01/2016 du 13 Janvier 2016, Avis sur le projet d'Arrêté royal modifiant l'arrêté royal du 10 décembre 1996 relatif aux différents documents d'identité pour les enfants de moins de 12 ans et l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (CO-A-2015-058). The text of the advice is available at the website of the Commission for the Protection of the Private Life <https://www.privacycommission.be/sites/privacycommission/files/documents/avis_01_2016.pdf>.

²¹⁷ In line with article 4 of the Council Regulation 1030/2002/EC of 13 June 2002 laying down an uniform format for the resident permits for third-country nationals. Official Journal of the European Communities L-157/1 of 15.06.2002.

²¹⁸ Avis n.º 60/2013 du 27 Novembre 2013, demande d'avis concernant l'avant-projet de loi relative aux traitements automatisés de données à caractère personnel nécessaires aux passeports et titres de voyage belges. The full text of the Advice/opinion is available at <[https://www.privacycommission.be/fr/search/site/biom%C3%A9trique?f\[0\]=ds_created%3A%5B2014-01-01T00%3A00%3A00Z%20TO%202015-01-01T00%3A00%3A00Z%5D](https://www.privacycommission.be/fr/search/site/biom%C3%A9trique?f[0]=ds_created%3A%5B2014-01-01T00%3A00%3A00Z%20TO%202015-01-01T00%3A00%3A00Z%5D)>.

public authorities, but also to private companies that used this kind of data of their workers. The advices of the Commission are all in line with the European instrument as well as with the national law on the protection of personal data. On the contrary, no remarkable judicial objections have been launched against the inclusion of these type of data in passports or travel documents.

Due to the lack of information, i.e., numbers provided by the of Federal Public Service of Foreign Affairs of Belgium, before 2012 it is not possible to give a real substantial answer with regard the effects in the issuance of passports and travel documents which include biometrical data, i.e., it is not possible to indicate if now are issued more or less passport than before the inclusion of these personal information. However, some number can be shown for the years 2013 and 2012, coinciding with the period in which Belgium started to issue the new biometrical passports and travel documents. Consequently, at the end of 2013, 22.667 biometrical passport were issued by the municipalities, 2.805 by the provinces and 4.531 by the Embassies and Consulates²¹⁹. At the end of 2012, 29.849 biometrical passport were issued by the Belgian Consulates and Embassies and 1.633 biometrical passport were issued by the Belgian Foreign Office placed in Brussels²²⁰.

Regarding the ‘chilling effect’²²¹ of the inclusion of biometrical data in Belgian travel documents, the Future of Identity in the Information Society (FIDIS, hereinafter) in its report ‘D13.4: The privacy legal framework for biometrics’²²² showed some data obtained about the feelings of Belgian nations to this extent. The conclusions showed that two-thirds of Belgians surveyed were in favour of the inclusion of biometrical data mainly because it is an ideal way to fight against the fraud and identity theft²²³.

Question 13 – Inclusion of fingerprints (unilaterally) and its possible effects.

(only to be answered in continuation of Question 12, first sub-question!)

- ✓ *When did your country introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents?*

²¹⁹ All the data are extracted from the Annual Activity Report of 2013 of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service. Rapport d’activités 2013 du Service Public Fédéral des Affaires Étrangères, Commerce extérieur et Coopération au développement, pp. 15-16. The text of the Report is accessible at http://diplomatie.belgium.be/fr/binaries/Rapport_Activite_SPF_Affaires_etrangeres_2013_tcm313-266016.pdf

²²⁰ The data are extracted from the Annual Activity Report of 2012 of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation Service. Rapport d’activités 2012 du Service Public Fédéral des Affaires Étrangères, Commerce extérieur et Coopération au développement, p. 14. The text of the Report is accessible at http://diplomatie.belgium.be/fr/binaries/BuZa%20-%20Jaarverslag%202012%20-%20FR_tcm313-225931.pdf.

²²¹ It is important to note that not extensive surveys in this regard had been conducted in Belgium, consequently the information that can be provided is a bit limited.

²²² Report of 8 May 2009. The full text of the report is accessible at <http://www.vub.ac.be/LSTS/pub/Dehert/346.pdf>.

²²³ As extracted from the FIDIS report, op. Cit. (n.222), p. 42.

- ✓ *Were there any non-judicial objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?*
- ✓ *Were there any judicial objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?*
- ✓ *Do citizens generally experience the inclusion of biometric features in the passports and travel documents as a hindrance, i.e. did they in any way have a 'chilling effect' on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the mandatory introduction of biometric features in your country (e.g. on the number of passports issued).*

For Belgian nationals, Belgium has not collected or introduced biometrical data in its travel documents before the adoption of the Regulation 2252/2004/EC, as extracted from the previous question's answers. It is important to note, then, that the answer to this question only focus on the travel documents issued for Belgium to foreigners, regardless EU citizens or non-EU citizens.

As indicated in the previous question almost at the same time the Regulation 2252/2004 was adopted, Belgium approved the Program Law of 27 December 2004 which among others amended the Law of 15 July 1996 amending the Law of 15 December 1980 on access to the territory, residence, establishment of foreigners in Belgium. A new redaction was given to article 30bis of the Law. This article specifies that fingerprints and photo might be collected from foreigners requesting a visa or a stay in the territory or to who are expelled from Belgium. The article also clarify which authorities can collect this data. It is important to stress that the biometrical data collected can only be used to identify or verify the identity of the foreign who holds it. It is also used to check if the holder is a danger for the Belgian public order or national security. In this case, the process, collection and storage of the biometrical data collected from foreigners is under the control of the Belgian Privacy Act. As it has been previously indicated, the scenarios set out in article 30bis have been complemented by those regulated in article 51/3 of the Law of 15 December 1980. This article indicates that fingerprints can be collected from foreigners who seek asylum or who already have the asylum status from a foreign country. The article also stress the fact that the fingerprints collected within this scenario can only be used to the extent of establish the identity of the foreigner or to determine the responsible State for examining the asylum application under the European regulations binding in Belgium or to examine the asylum application.

No real non-judicial objections were launched against the collection of biometrical data of foreigners. However, the collection, storage and process of this kind of sensible data in the

travel documents has been frequently a subject of different examinations with the compliance of the data protection regulations by the Belgian Commission of Private Life Protection.

Regarding the jurisprudence on the scope of application of article 30*bis* and 51/3 of the Law of 15 December 1980, no relevant complaints have been started in front of the Litigation Council of Foreigners regarding the subject of collection, storage and process of biometrical data. However, the subject of the collection, process and storage of fingerprints, and more precisely regarding the used gave to that biometrical data is examine as an indirect point within most of the asylum applications and moreover, most of the claims reaching the Litigation Council of Foreigners, as appreciated in different recent sentences issued. As an example the following ones;

-Sentence n.° 159.334 of 23 December 2015²²⁴;

-Sentence n.° 159.166 of 22 December 2015²²⁵;

-Sentence n.° 158.210 of 10 December 2015²²⁶.

As answered in the previous question, not many empirical surveys have been conducted in this regard within Belgium. Nonetheless, some data are available since 2012 in the yearly report of activity of the Belgian Federal Public Service of Foreign Affairs and in its website. For example in 2012 the number of biometric Schengen visas issued was a total of 88.232 (including in the countries in which the collection of biometrical data is voluntary). In the countries in where the collection of fingerprints is compulsory, Belgian Embassies and Consulates issued 34.918 biometrical visas²²⁷. However, what it can be really pointed out is that, particularly in Belgium, there are or have been other factors, such as the modifications of the Belgian Code of Nationality, that have had a bigger or a most considerable impact in the issuance of travel documents to foreigners than the inclusions of biometrical data, as shown the Report of Migration and Population issues in Belgium²²⁸.

As the ‘chilling effect’ of biometrical data within the foreign population in Belgium, it cannot be provided a reliable information due to the lack of statistics/surveys in this regard has been conducted²²⁹.

²²⁴ Arrêt n.° 159.334 du 23 Décembre 2015. The entire text of the Sentence is accessible at the website of the Litigation Council of Foreigners at <<http://www.rvv-ccf.be/sites/default/files/arr/A159334.AN.pdf>>.

²²⁵ Arrêt n.° 159.166 du 22 Décembre 2015. The full text of the Sentence is accessible at the website of the Litigation Council of Foreigners at <<http://www.rvv-ccf.be/sites/default/files/arr/A159166.AN.pdf>>.

²²⁶ Arrêt n.° 158.210 du 10 Décembre 2015. The complete text of the Sentence is accessible at the website of the Litigation Council of Foreigners at <<http://www.rvv-ccf.be/sites/default/files/arr/A158210.AN.pdf>>.

²²⁷ As indicated in the website of the Belgian Federal Public Service of Foreign Affairs, <http://diplomatie.belgium.be/fr/Services/services_a_letranger/biometrie/>.

²²⁸ ‘Rapport statistiques et démographique 2013, Migrations et Populations issues de l’immigration en Belgique’, Université Catholique de Louvain, Centre de recherché en démographie et sociétés (DEMO) & Centre pour l’égalité des chances et la lute contre le racisme. The complete report is accessible at <http://www.diversite.be/sites/default/files/documents/publication/rapport_statistique_et_demographique.pdf>.

²²⁹ Or not that I have found.

Question 14 – Processing of biometric data and possible objections thereto

- ✓ *Did the measures introduced in your country requiring the collection and retention of the fingerprint data for use in connection with travel documents indicate where the data is to be kept, or is this otherwise known (e.g. a central registry)?*
- ✓ *In case such data is kept in a central registry, does domestic law allow for it to be used / processed also for other purposes, such as national security, prevention of crime and identification of disaster victims?*
- ✓ *In case such data is kept in a central registry, and domestic law allows for it to be used / processed also for other purposes, was this leniency introduced openly and without (public) resistance?*
- ✓ *In case there was (public) resistance and if there were objections lodged, either during the parliamentary process or in subsequent court procedures, what were the outcomes and effects of these actions?*

The collection, storage and processing of biometrical data in Belgium is subjected to the general data protection legislation, i.e., the Law of 8 December 1992 (including all the amendments) and to the European Laws on this regards.

As indicated, only Belgian passport include this kind of biometrical data (i.e., fingerprints), as Belgian I.D. does not included them yet. With regard to passport, the biometrical data are store in the electronic chip of the passport that can be found in its back cover. Normally, upon the application of the passport the data are stored for 3 months. This enable Belgian public authorities to manufacture the passport. After this period the data are destroyed. However, the applicant have the possibility to request that his/her data are stored for 5 or 7 years, depending if the applicant is a child or an adult²³⁰. It is important to indicate that this request for storing biometrical data, more precisely, fingerprints is only available for those Belgian citizens living abroad who had made the passport application via an Embassy or Consulate. It is important to indicate that the data will only be store for the validity period of the passport after which the applicant will have to address again the local authority or the Embassy or Consulate in order to provide his/her biometrical data again. In any event, the data that are not destroyed are transferred to other automated processing systems, particularly in the context of the fighting against the fraud of Belgian passports²³¹. The purpose to store the fingerprints stored for 5 of 7 years, apart from identify and verify the identity of the holder, is mainly to allow the holder of the passport to ask for a duplicate more easily in case

²³⁰ To choose for this possibility it can be recommended to the applicant in case or loss, theft, administrative error or mistake in the issuance of the passport as well as the reduction in the price when requesting for a duplicate.

²³¹ 'Précisions sur le traitement des données reprises sur les passeports et titres de voyage belges', Jura, 5 March 2015. The full text of the article is available at <<http://www.legalworld.be/legalworld/content.aspx?id=83554&LangType=2060>>.

of theft, loss, administrative error or similar. It is also enable the holder to have a duplicate for a reduced price.

The responsible of the retention of biometrical data (only the scanned image of the facial image²³²) and the data to fight against the fraud of Belgian passports is the Belgian Federal Public Service. These data are also transmitted to the Belgian Federal Interior Public Service for the 'Checkdoc' application²³³. The three type of data that will be transferred are; the data of the holder of the passport²³⁴, the data of the passport itself²³⁵ and the data of the production of the passport²³⁶. All these data are retained for 20 years after then they are all destroyed. These period is necessary in order to effectively fight against passport fraud. Since a passport is valid up to ten years, it was decided to set the data retention period twice a decade. In this way, data can always be compared with those of two passports issued previously. For example through a facial recognition software, it will be possible to compare the applicant's facial image with that of the last two passports or travel documents²³⁷. The treatment of the data is subjected to the compliance with the personal data protection regulation and it has to be communicated to the Belgian Commission of the Private Life Protection.

Regarding the biometrical data, i.e., fingerprints collected pursuant article 30*bis* of the Law of 15 December 1980, which does not directly answer the purpose of one of the European databases, they are subjected to national level storage²³⁸. Belgium does not have a specific legislation which govern the organization of the biometrical data bank, containing the fingerprints of all foreigners. However, the Royal Decree of 21 April 2007 determining the time within which the biometric data, taken in the context of Article 30*bis* of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens, should be preserved²³⁹, in its article 1 indicates that the biometric data, taken in the context of

²³² The fingerprints will not be kept unless a request from the applicant is obtained in this extent and only the fingerprints of Belgian citizens abroad that has made the application in an Embassy or Consulate can be store for a period of 7 or 5 years.

²³³ Is an application that allows to verify whether Belgian identity documents, i.e., passports, I.D. or resident permits are valid or not. The website can be visited at <<https://www.checkdoc.be/CheckDoc/>>.

²³⁴ Name, surname, date and place of birth, sex, and signature, national register number, scanned image of facial image and nationality (except for foreign travel documents, stateless persons and refugees).

²³⁵ Number, type, application procedure (normal or urgent), date and place of issuance, issuing authority and expiration date.

²³⁶ Place of production, place of deposit, the date of receipt and serial number, any refusal of the application, production status, with date, the demand deposit administration, the date of sending the documents to the authority, the tracking number and the status of the chip.

²³⁷ 'Précisions sur le traitement des données reprises sur les passeports et titres de voyage belges', op. cit. (n.226).

²³⁸ 'Empreintes digitales, Banques de données, Eurodac', Comité Belge D'Aide aux Réfugiés (C.B.A.R.)/ Belgisch Comité Voor Hulp aan Vluchtelingen (B.C.H.V.), 1 June 2011. The complete text of the report can be consulted at <http://www.cbar-bchv.be/Portals/0/Information%20juridique/Asile/Analyses/CBAR_FAQ_Empreintes_Eurodac_01-06-2011.pdf>.

²³⁹ Arrêté royal du 21 Avril 2007 portant détermination du délai durant lequel les données biométriques, prises dans le cadre de l'article 30bis de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, doivent être conservés / Koninklijk besluit houdende vaststelling van de termijn gedurende welke de biometrische gegevens, die in het kader van artikel 30bis van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen

article 30bis the Law of 15 December 1980, are kept for a period of time of 10 years. For the rest of the data they are referred to the general legislation, i.e., the Belgian Law of 8 December 1992 on personal data protection and the European law on personal data protection. As indicated in article 30bis, the biometric data collected under its scope of application can only be used for the following purposes²⁴⁰; to identify or verify the identity of the foreign who holds it. It is also used to check if the holder is a danger for the Belgian public order or national security.

The data stored at a national level, which have not been recorded in a European Central data base, are not in principle accessible or communicate to foreign governments, but in some cases they can be available to foreign governments. It is possible that a data exchange can take place in a bilateral agreement framework. For example, in judicial matters the Prüm Convention²⁴¹ opened a wide opportunities for data exchange between the signatory states. On the other hand a national database gathering fingerprints may be accessed by foreign authorities in order to prevent and prosecute criminal offenses if it can be consulted by local police and judicial authorities²⁴².

No (public) resistance have been detected when this kind of leniency have been introduced in such way.

Question 15 – Collection of other types of biometric data and possible objections thereto

- ✓ *Beyond fingerprints, are in your country any other types of biometric data required to be included in passports and other travel documents? If so, which types?*
- ✓ *Were there any non-judicial objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests, and what were their effects?*
- ✓ *Were there any judicial objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were the outcomes of these procedures?*

worden afgenomen, dienen bewaard te worden. *Moniteur Belge / Belgisch Staatsblad* May 2007. The Royal Decree entered into force the 10 June 2007.

²⁴⁰ To respect this purposes has also been highlighted/reinforced by the Belgian Commission for the Protection of Private Life in several advices issued.

²⁴¹ Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in the fight against terrorism, border crime and illegal migration, Made at Prüm the 27 May 2005. The text of the Convention is accessible at <http://ec.europa.eu/anti_fraud/documents/data-protection/dpo/prumtr.pdf>.

²⁴² 'Empreintes digitales, Banques de données, Eurodac', op. cit. (n.233).

- ✓ *Do citizens generally experience the inclusion of this additional biometric data in the passports and travel documents as a hindrance, i.e. did they in any way have a 'chilling effect' on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the introduction of these requirements.*

Apart from fingerprints the other biometric data included in Belgian passports and other travel documents are the photo of the holder of the document. Regarding the photo included in Belgian travel documents it has to respect the strict standards set out by I.C.A.O. Only the photos which meet these standards are accepted²⁴³. Thus the I.C.A.O. standards are directly applicable in Belgium so the following conditions regarding the pose, lighting, exposure and colour balance and the submission of the portrait to foreign authorities as well as the compliance with international standards have to be met. Nonetheless it is important to stress some exceptions to these general rules.

First of all, if a religious reason is opposed and due to this reason the person cannot appear in the photo with a naked head, the person can appear with a head cover as far as the other acceptance criteria's are met²⁴⁴.

Second, in case of physical or medical reasons prevent the applicant to meet all the acceptance criteria. In case of serious doubts about the reason given, it might be requested to the applicant to provide a statement signed by a physician or qualified medical facility to this extent.

Third, if the applicant is a baby or a child under the age of 6 years, the criteria are somewhat alleviated. All the acceptance criteria apply except: the position criteria (eyes on a horizontal line, head up, shoulders straight) and facial expression (neutral expression, looking straight into the lens, mouth close).

No special objections (non-)judicial have been observed regarding the inclusion of photos in Belgian travel documents.

Regarding to the chilling effect of the inclusion of this biometric data, as answered in question 12, Belgians in general are in favour of the inclusion of biometrical data mainly because it is an ideal way to fight against fraud and identity theft. In case of non-Belgian nationals, as indicated in the answer of question 13, it cannot be provided a reliable information due to the lack of statistics/surveys in this regard has been conducted.

²⁴³ It is possible to consult the official I.C.A.O. standards in the following link <http://diplomatie.belgium.be/en/binaries/Photos_ICAO_9303_EN_tcm312-237668.pdf>.

²⁴⁴ As indicated in the requirements for Passport photos and kids-I.D. set out by the Belgian Federal Foreign Affairs Service. The requirements are available at < http://diplomatie.belgium.be/fr/binaries/Normes-ICAO-FR_tcm313-242599.pdf>.

✓ PART IV – ACTUAL OR POTENTIAL OBSTACLES FOR EU CITIZENS

Introduction

Here as anywhere else, differences between legal systems of the various Member States can actually or potentially create particular obstacles for static and mobile EU citizens alike. To an extent, these can be of a predominantly practical or technical nature. At the same time, these may flow from policy practices with regard to selective recognition of travel documents, sanctions imposed in case of non-compliance, denial of consular protection, or the treatment of travelling (accompanied or unaccompanied) minors. In addition to varying from country to country, the relevant conditions and procedures may change without prior notice. The following set of questions see to further expose the hindrances EU citizens may be confronted with.

Question 16 – Hindrances for own nationals as regards the venues and costs for obtaining travel documents.

- ✓ *In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by own nationals with regard to the accessibility of the venues where travel documents can be obtained or renewed?*
- ✓ *Equally, in reference to the answers provided to Questions 5-10 above, are any particular hindrances experienced in your country by own nationals with regard to the costs associated with the application for and acquisition of travel documents?*

With reference to the hindrances that Belgians national might experience in Belgium with regard to the accessibility of the venues where travel documents can be obtained, no one can be mentioned due to the issuance of Belgian travel documents is centralized in the local authorities. To this extent every Belgian have an easy access to their home city hall. Regarding Belgian citizens living abroad, some hindrances can be experience depending of their election of country and city in where they have moved to. This mainly based on the reason that Belgian Embassies and Consulates have limited locations abroad, so this means, that Belgian living abroad have to move to the Embassy or Consulate of their jurisdiction, which sometimes can be very far from their place of residence.

Concerning the costs a lot of difference are experienced by Belgian living abroad and living in Belgium, and even between Belgians living in Belgium. Internally, i.e., between Belgian citizens living in Belgium, the main reason for this divergences is the local taxes that the municipalities can impose on top of the fix price established by the State. Externally, i.e., between Belgian citizens living in Belgium and Belgians living abroad, the difference in the cost is based on the fix price established by the Federal State to Consulates and Embassies when issuing travel documents abroad. While Belgians living abroad they will pay a fix price for their travel documents, regardless where the Embassy or Consulate is placed, Belgians

living in Belgium will pay different prices depending in where they lived, due to the local tax that the municipalities might impose for issuing travel documents. The only difference that Belgian living abroad might experience, regarding the costs, is regarding the exchange rate of the euros and local currency due to the fees has to be paid in the local currency of the country in which the Embassy or Consulate is established.

Question 17 – Hindrances for EU citizens as regards the venues and costs for obtaining travel documents.

- ✓ *What are the three largest groups of non-national EU citizens that annually visit your country (i.e. short-term residents in the sense of Directive 2004/38/EC, stay < 3 months)?*
- ✓ *What are the three largest groups of non-national EU citizens present in your country for a more extended duration (i.e. long-term residents in the sense of Directive 2004/38EC, stay > 3 months)?*
- ✓ *In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by these particular groups of mobile EU citizens with regard to the accessibility of the venues where travel documents can be obtained or renewed? (e.g. necessity to travel abroad, due to the unavailability of consular delegations)*
- ✓ *In reference to the answer provided to Question 8 above, are any particular hindrances experienced in your country by these particular groups of mobile EU citizens with regard to the timeframe associated with the application for and acquisition of travel documents for newborn children?*

(Note that some of the data necessary to provide an answer to this question may be procured from consular authorities of the relevant Member States, from national complaint bodies such as Ombudsmen, or by contacting mobile EU citizens and inquiring if they have personally encountered any such problems.)

The three largest group of EU citizens and non-EU nationals that annually visit Belgium are the following²⁴⁵;

- Non-national UE citizens in 2012²⁴⁶: Morocco – 8.688; Democratic Republic of Congo – 6.652 and Russia – 2.898.
- Non- national EU citizens in 2013²⁴⁷: Democratic Republic of Congo – 8.252; Morocco – 6.310 and Nigeria- 2.537.

²⁴⁵ The data are given in the three last years, 2012, 2013 and 2014. The year 2015 has not been included as it is very soon to any statistics data about it. The numbers provided are given in relation with the visa or short stay permit processed by the Belgian Foreigners Office.

²⁴⁶ The data are obtained from the Annual Activity Report of 2012 of the Belgian Foreigners Office, p. 79. The report is available at the website of the Belgian Foreigners Office at <https://dofi.ibz.be/sites/dvzoe/FR/Documents/2012_FR.pdf>.

- Non-national EU citizens in 2.14²⁴⁸: Democratic Republic of Congo – 8.571; Morocco- 6.686 and India – 2.332.

As it has already been indicated, there is an obligation set out by Belgian legislation²⁴⁹, to communicate upon the arrival in the country the presence for every EU citizen staying in Belgium for a short term. However, the normal trend is not to do it, consequently to have an accurate information about the nationalities of these mobile EU citizens is almost impossible. Nonetheless, regarding the survey conducted by the Belgian Government as regard Belgian tourism based upon nationalities of origin these three nationalities can be detected as the top ones visiting Belgium, in 2014, for a short term²⁵⁰: Netherlands, France and U.K.

In the context of short-term residence the request of non-national EU citizens mainly falls within the following categories; tourism, business, cultural reasons, conferences/studies, family visits and requests for medical reasons²⁵¹. This reasons can also be applicable to the EU citizens staying or visiting Belgium for a short period of time.

Regarding the long-term residents;

- Non-EU citizens in 2012²⁵²: Turkey, China, India, Morocco, Russia and United States.
- EU citizens in 2012²⁵³: France – 10.903; Rumania- 9.926 and Netherlands – 8.600.
- Non- EU citizens in 2013²⁵⁴: India, Turkey, Algeria, China, Brazil, Morocco, United States and Russia.
- EU citizens in 2013²⁵⁵: Italy, France and Netherlands.
- Non EU citizens in 2014²⁵⁶: Morocco, India and United States.

²⁴⁷ The data are obtained from the Annual Activity Report of 2013 of the Belgian Foreigners Office, p. 80. The report is available at the website of the Belgian Foreigners Office at <https://dofi.ibz.be/sites/dvzoe/FR/Documents/2013_FR.pdf>.

²⁴⁸ The data are obtained from the Annual Activity Report of 2014 of the Belgian Foreigners Office, p. 21. The report is available at the website of the Belgian Foreigners Office at <https://dofi.ibz.be/sites/dvzoe/FR/Documents/Rapport%20statistiques%202014%20FR_v2.pdf>.

²⁴⁹ In article 41*bis* of the Law of 15 December 1980.

²⁵⁰ The data are obtained from the website of the Belgian Federal Government, excel charter on '*Tourisme selon pays de provenance 2014*', available at <http://statbel.fgov.be/fr/modules/publications/statistiques/marche_du_travail_et_conditions_de_vie/tourisme_selon_pays_de_provenance_et_selon_type_d_hebergement_2014.jsp>.

²⁵¹ As indicated by the Annual Activity Reports of 2012-2013, op. cit. (n. 246 and n.247).

²⁵² The data are obtained from the Annual Activity Report of 2012 of the Belgian Foreigners Office, op. cit. (n.246), p. 87. It must be note that in de data taken from the report statistics regarding students and family reunification are not taken into account. The data provided is a merger of the first 3 top nationality applying for Visas and long-term authorization in the territory of Belgium.

²⁵³ The data are obtained from the Annual Activity Report of 2012 of the Belgian Foreigners Office, op. cit. (n. 246), p. 103. The numbers provided refers to the amount of applications for a long stay in Belgium.

²⁵⁴ The data -are obtained from the Annual Activity Report of 2013 of the Belgian Foreigners Office, op. cit. (n.247), p. 88-91. It must be note that in de data taken from the report statistics regarding students and family reunification are not taken into account. The data provided is a merger of the first 3 top nationality applying for Visas and long-term authorization in the territory of Belgium.

²⁵⁵ The data are obtained from the 'Rapport Statistique et démographique 2013, Migrations et populations issues de l'immigration en Belgique', Centre de recherché en démographie et sociétés KU Leuven (DEMO) & Centre pour l'égalité des chances et la lute contre le racisme, p. 86. The complete report is available at <http://www.diversite.be/sites/default/files/documents/publication/rapport_statistique_et_demographique.pdf>.

- EU citizens in 2014²⁵⁷: Italy, France and Netherlands.

In the context of long-term residence the request mainly falls within the coming categories; family reunification, education, employment reasons and asylum seeker.

With reference of accessibility venues of EU citizens, as well as for Belgian citizens living abroad, who request their travel document via a Belgian Consulate of Embassy the main hindrance is the accessibility of Belgian consulates abroad. Normally the Belgian Consulates and Embassies are placed in the most important cities of the Country, thus they will have to move to the Belgian Consulate or Embassy of their jurisdiction. Nonetheless, some administration procedures can be done via mail, regarding travel documents they will need to physically address the Embassy or Consulate in order to provide their biometric data.

If the EU citizen apply for the travel document within the Belgian territory, the situation is a bit different. They would not have problems to address the authorities responsible for issuing the travel documents, as it is also centralized in the municipalities for almost every administration involving the acquisition of these documents. However, one of the main problems is the linguistic barriers that they might encounter, as Belgium is divide into 3 Communities linked to the language, French-speaking Community, Flemish-speaking Community and the German-speaking Community. Thus, depending in where the municipality is placed the language to access to the local authorities, as well as the issuance of the travel documents will be, either in French, Dutch or German²⁵⁸.

Furthermore, as happened with Belgian citizens, EU citizens applying for travel documents within Belgium will experience a difference in the cost of obtaining these documents regarding the discretionary that the municipalities have to charge an extra local tax to the fix price establish in a Federal Level.

As indicated in the answer given to question 8, the timeframe for the issuance of travel documents to EU citizens, i.e., the foreigners' e-card is a bit longer than for a Belgian citizen. The main reason for these divergence, as explained, is found in the longer time needed to complete the file of the foreigner. The timeframe can be estimated between 3 and 6 months more or less.

²⁵⁶ Due to the lack of information provided in the Annual Activity Report of 2014 of the Belgian Foreigners Office, op. cit. (n.248), the present information is obtained from Eurostat at <http://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics>. The information is based on resident permit statistics.

²⁵⁷ According to the data obtained from '*Foreign citizens accounted for fewer than 7% of persons living in the EU Member States in 2014*', Eurostat news release, 230/2015 – 18 December 2015. The full document is accessible at <<http://ec.europa.eu/eurostat/documents/2995521/7113991/3-18122015-BP-EN.pdf/d682df12-8a77-46a5-aaa9-58a00a8ee73e>>.

²⁵⁸ However, it must be noted that the civil servant working in the municipalities speak another language of the country and even, English, so to address them is not very complicated. But, anyway it is necessary for the foreigner to manage at least in one of these languages.

Question 18 – Discrepancies in the recognition of travel documents for identification purposes.

Background example (fictitious)

Björn is Swedish and holidaying in Slovakia. He took his ID card issued by a bank with him – which in Sweden is accepted as proof of identity.

Björn could get into trouble however if the Slovakian authorities want to check his identity, because the only valid ID documents they recognise are national ID cards and passports issued by the Swedish authorities.

- ✓ *Are there discrepancies in the travel documents recognised as valid ID in the home country of the three largest groups of (non-)national EU citizens that annually visit your country (identified under Question 17), as compared to the travel documents that are recognised in your Member State.*
- ✓ *Are there discrepancies in the travel documents recognised as valid ID in the home countries of the three largest groups of (non-)national EU citizens present in your country for an extended duration (identified under Question 17), as compared to the travel documents that are recognised in your Member States?*

As indicated in article 2 of the Law of 15 December 1980, every foreigners willing to enter in Belgian territory must be provided with; or a document required under an international treaty, law or a Royal Decree or with a valid passport or travel documents, with a visa or an authorization replacing a valid visa for Belgium. For EU citizen, also a valid I.D. card is considered valid as a travel document.

The following table explain the documents accepted and not as a valid identity document to identify as an EU citizen when transiting or willing to reside in Belgium.

Nationality of the person residing in Belgium	Dutch ²⁵⁹	French ²⁶⁰	British UK ²⁶¹	Italian ²⁶²
Accepted documents to identify him/herself in home country	I.D. Passport Driven licence	I.D. Passport. Driven licence	I.D. Passport. Driven licence	I.D. Passport Driven licence
Accepted documents to identify him/herself in Belgium	I.D. Passport			
Differences (i.e. documents do accepted in home country but not accepted in Belgium)	Driven licence are not accepted in Belgium to identify as an EU citizen.			

Question 19 – Consequences of expiry or loss.

- ✓ *Does your country allow for EU citizens to enter the territory without being in possession of a valid travel document? If so, under which conditions?*
- ✓ *Does your country allow for EU citizens to exit the territory without being in possession of a valid travel document? If so, under which conditions?*
- ✓ *Which sanctions, if any, are applied to own nationals that are found to be not in possession of a valid travel document when attempting to enter or exit the country?*
- ✓ *Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.*
- ✓ *Which sanctions, if any, are applied to nationals of other Member States that are found to be not in possession of a valid travel document when residing in, transiting or travelling across your country?*
- ✓ *Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.*

²⁵⁹ As indicated in the website of the Government of Nederland at <<https://www.rijksoverheid.nl/documenten/vragen-en-antwoorden/met-welke-identiteitsbewijzen-kan-ik-mij-identificeren>>.

²⁶⁰ As obtained from the website of PRADO database at <<http://www.consilium.europa.eu/prado/es/prado-documents/fra/index.html>>.

²⁶¹ As obtained from the website of PRADO database at <<http://www.consilium.europa.eu/prado/es/prado-documents/ita/index.html>>.

²⁶² As obtained from the website of PRADO database at <<http://www.consilium.europa.eu/prado/es/prado-documents/ita/index.html>>.

Every EU citizen has the right to reside in Belgium for a period of three months without any conditions or formalities other than those mentioned in article 41.1 of the Law of 15 December of 1980²⁶³. According to the abovementioned article 41.1 every EU citizen is free to enter in Belgium upon presentation of a valid I.D. or valid passport or other document that can prove that (s)he is a beneficiary of the right to move and reside freely within the Schengen area. In case that the EU citizen does not have the required document, the Belgian Minister or his delegate grants him/her with all reasonable means to enable the EU citizen to obtain or acquire, within a reasonable time, a valid I.D. or passport or to confirm that (s)he is the beneficiary of the right to move and reside freely within Belgium, before to expel the EU citizen from Belgian territory.

Regarding the situations in which the travel document of the EU citizen has expired within his/her stay in Belgium, special conditions are contained in the provisions of the Law of 15 December 1980 or the Royal Decree of 8 October 1981. Nonetheless, the EU citizen, in order to avoid any problem, is requested to contact one of his/her home country Embassy or Consulate in Belgium in order or to have renewed his/her passport or I.D. or to get a temporary travel document which allows him/her to leave Belgium and enter his/her home country without any further problems. If an EU citizen or his/her family member is found in Belgium without a valid I.D. or passport the Belgian Minister or his delegate may impose him/her an administrative fine of 200 € The fine is levied in accordance with article 42*octies*, according to what it is established in article 41.4 of the Law of 15 December 1980. The decision imposing the administrative fine is immediately enforceable, but subjected to an appeal²⁶⁴. The fine may be paid by depositing the amount due to the ‘Caisse des Dépôts et Consignations’²⁶⁵. Nonetheless the EU citizen or his/her family member can introduce a written request of appeal to the decision in the Court of First Instance within a period of one month since the notification of the decision, as indicated in article 42*octies*.2. In case that the appeal does not have a good end for the EU citizen or his family member and (s)he still have pending the payment of the fine, the Court of First Instance will give knowledge to the Cadastre Administration, Registration and State Property in order to recover the amount of the administrative fine²⁶⁶.

In case that a Belgian citizens is found to be not in possession of a valid travel document an economic fine²⁶⁷ or a criminal penalties²⁶⁸ can be apply to them according to what is establish in article 7 of the Law of 19 July 1991 relating to population register²⁶⁹. This

²⁶³ As indicated in article 40.3 of the Law of 15 December 1980.

²⁶⁴ Article 42*octies*.1 of the Law of 15 December 1980.

²⁶⁵ Consignatiekas.

²⁶⁶ Article 42*octies*.4 of the Law of 15 December 1980.

²⁶⁷ From 26 € to 500 €

²⁶⁸ The criminal penalties are contained in article 85 of the Belgian Penal Code.

²⁶⁹ Loi du 19 Juillet 1991 relative aux [registres de la population, aux cartes d'identité, aux cartes d'étranger et aux documents de séjour] et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques/ Wet betreffende [de bevolkingsregisters, de identiteitskaarten, de vreemdelingenkaarten en de verblijfsdocumenten] en tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen. *Moniteur Belge / Belgisch Staatsblad* 3 September 1991. The Law entered into force the 13 September 1991.

sanctions will be applied to persons who, due to their negligence, are still in possession of an old I.D. During the identity check, Belgian police are required to check the validity of the cards²⁷⁰. In any event, in case of close expiration of travel document, i.e., I.D. or passport, Belgian citizens have some accelerate procedures in order to get renewed or a new travel document. In case of loss, theft or destruction of the card or passport, it is also required a declaration of loss, theft or destruction of the I.D. or passports. This measures applied also for the travel documents of Belgian children.

Question 20 – Grant of consular protection to EU citizens not in possession of valid travel documents.

✓ *In practice, is in your country consular protection granted by other countries to mobile EU citizens that are found not to be in possession of valid travel documents?*

If available, please include in your answer any figures, statistics and/or salient examples with regard to the occurrence of the grant of consular protection in such cases.

It is not easy to have an accurate information about the consular protection granted by other Member States to EU mobile citizens in Belgium due to the lack of information to this extent. In any event, every Member State have websites of the Consular or Diplomatic representation in Belgium and they are easily accessible. However, as indicated, almost every Member State has a consular or diplomatic representation in Belgium to where they EU mobile citizen can address their home country Consulate or Embassy in order to solve their problems with travel documents.

In any event, since 20 April 2015 every Member States adopt the Directive 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC. This Directive is directly binding in Belgium. The kind of protection granted under the scope of application of the Directive entitles the following situations; assistance in cases of death, serious accident or illness, arrest or detention, victims of violent crime and relief and repatriation of distressed EU citizens²⁷¹.

²⁷⁰ As indicated in the website of Belgian Federal Interior Service <<http://www.ibz.rn.fgov.be/fr/documents-didentite/eid/faq/>>.

²⁷¹ As indicated in the website of the European Commission <http://ec.europa.eu/justice/citizen/consular-protection/index_en.htm>. This kind of assistance is also stressed by the Belgian Service of Foreign Affairs in its website <http://diplomatie.belgium.be/fr/Services/voyager_a_letranger/belges_en_detresse/>.

Question 21 – Possible documentation-related obstacles suffered in travelling with minors.

- ✓ *Are the additional documentation requirements (if any) imposed on minors travelling alone, travelling with adults who are not their legal guardian, and/or travelling with only one parent, known to cause substantial hindrances to mobile EU citizens in practice?*

No other specifications than the one indicated in the answer given to question 11, to which I refer to, are imposed to minors travelling alone as far as there is no Belgian rule imposing any extra official or not document signed for the parents authorising children traveling alone.

PART V – ACTUAL OR POTENTIAL OBSTACLES FOR TCN FAMILY MEMBERS

Introduction

Not only EU citizens, but also their TCN family members may experience difficulties in their access to and use of travel documents, either de jure or de facto; those difficulties may moreover be condoned by EU law, or expressly condemned as incompatible with the rules applicable to the relevant situation. A distinction can be drawn between cases in which TCN family members carry the (optional) EU residence card with them when travelling (alone or together), or when they are doing so while not in possession of that document; the legal consequences vary, depending on the scenario at hand.

Question 22 – Possible documentation-related obstacles suffered by TCN family members with residence cards.

Background example (fictitious)

Wen-ling, the Chinese spouse of a Dutch national living in Finland, has been issued an EU family member's residence card in Finland. Wen-ling and her husband wish to travel to Romania. As long as she is in possession of a valid passport and an EU family member's residence card, the latter country does not require her to have obtained of an entry visa. However, if she were to travel alone, she is required to have acquired such a document beforehand.

- ✓ *Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country and in possession of a family member's residence card?*
- ✓ *Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country and in possession of a family member's residence card, issued by the Member State where the family member is living with the EU national?*
- ✓ *Does your country require the possession of a family member residence card for third country national family members of EU nationals of another Member State travelling alone on domestic flights?*

The family members who are a third country national have to meet the following conditions in order to enter Belgian territory, regardless if they travel alone or they join the EU citizen. They can freely enter upon a presentation of a valid passport coated, if any, of an

valid visa²⁷². According to what is established in article 41.4 of the Law of 15 December 1980 the King determines the visa issuance procedures.

Nonetheless, Belgian Law also indicates in article 41.4 that in the case that a family member of an EU citizen does not have the required documents, the Belgian Minister or his delegate grants him/her with all reasonable means to enable him/her to obtain or acquire within a reasonable time, the required documents or to corroborate or prove by other means the beneficiary of the right to move and reside freely, before proceed with his/her expulsion.

It is important to note that the family members of an EU citizen possessing a family member of an EU citizen residence card or a permanent residence card for family member of an EU citizen²⁷³ do not need to request a visa to enter into the territory of Belgium.

Apart from other documents that the airlines might request, for domestic flight the non-EU national's family members of an EU citizen must be provided with valid travel documents, i.e., passport and a visa to enter, regardless they travel alone or together. They are only dispense from this 'obligation' in case the hold an EU citizen family member card or a permanent residence card for family member of an EU citizen.

Question 23 – Possible documentation-related obstacles suffered by TCN family members without residence cards

- ✓ *Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country, and not in possession of a family member's residence card?*
- ✓ *Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country, and not in possession of a family member's residence card?*

As indicated in the previous answer, as a general rule third country national family members of an EU citizen are required to have a valid passport and visa to enter in Belgium, moreover when traveling alone. This general rule is applicable in cases the TCN family member of an EU citizen travels together with the EU citizen.

However, some exceptions are applicable to TCN family members who do not are in possession of a valid travel document. Article 1er/3 of the Royal Decree of 8 October 1981

²⁷² Valid visa pursuant to the Regulation 2001/539/EC of 15 March 2001 listing the third countries whose nationals are subject to the obligation to visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement.

²⁷³ Issued on the basis of the Directive 2004/38/EC of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of member States.

transposes the Regulation (EC) 539/2001²⁷⁴ listing in its Annex I the third countries whose nationals are subject to visa requirements when crossing the external borders of the Member States and those whose nationals are exempt from that requirements is permitted on presentation of the document provided for in article 2²⁷⁵ of the law of 15 December 1980, with the exception of visa or authorisation, to enter the territory by Belgian State for a period not exceeding of 90 days within any period of 180 days.

The foreign exempted from a visa who is not in possession of a valid passport or valid I.D., might exceptionally be permitted to enter in Belgian territory if (s)he provides with²⁷⁶; a sufficient means of subsistence, it is not one of the cases contained in article 3 or the Law of 15 December 1980, if (s)he invokes compelling reasons in support of his/her application, if the duration of his/her stay does not exceed of 2 weeks and (s)he has to be in possession of a valid I.D. card or similar document accrediting his/her identity. Then (s)he is granted with special *laissez-passer* to enter in the territory of Belgium. In case that the abovementioned conditions are not met the issuance of special *laissez-passer* is subjected to the authorization of the Minister or his/her delegate.

When traveling together with the EU citizen the following exceptions can be mentions. Article 44 of the Royal Decree of 8 October 1981 explicitly indicated that the family members of a EU citizen who are not EU citizen can benefit from the provisions of Title II Chapter I²⁷⁷ of the Royal Decree as long as they prove their relationship, bond of alliance or partnership with the EU citizen whom they accompany or they join. However, if the family members cannot provide with the proof of kinship, marriage or partnership²⁷⁸ invoked the Belgian Minister or his/her delegate might consider other valid evidence which can proof the family link. As a third sources, if the previous ones are not valid, the article 44 indicates in its last paragraph that the Minister or his/her delegate can carry out interviews to either the EU citizen and the family member (s)he joined or other further investigations, if necessary.

In the same line, article 47 of the Royal Decree of 8 October 1981 establishes that the authorities responsible for the border control might allow the entry to a family member of an EU citizen who is not a citizen of the Union and does not hold the documents required by article 2 of the Law of 15 December 1980 if (s)he can provide with one of the following documents; a valid passport, valid I.D. or a residences card of the family member of the EU²⁷⁹ or with any other proof of identity and nationality. In case that the family member is exempted from the visa requirement as explained above, (s)he will be provided with a special

²⁷⁴ Op. cit. (n.272).

²⁷⁵ Any document required under international treaty, law or Royal Decree or a valid passport or travel document in thereof, with a visa or an authorization replacing a valid visa for Belgium affixed by a Belgian diplomatic or consular representative or by an international binding convention on the crossing of external borders.

²⁷⁶ See article 12 of the Royal Decree of 8 October 1981.

²⁷⁷ Concerning to Foreigners, EU citizens and their family members and foreigner family members of a Belgian national.

²⁷⁸ The proof has to be in accordance to what is establish in article 30 or the Belgian Code of Private International Law which settles that the official documents granted from a foreign public authority has to be legalized to be valid in Belgium.

²⁷⁹ Issued on the bases of article 10 or 20 of the Directive (EC) No. 2004/38 of 29 April 2004.

laissez-passer. On the other way round, in case that the family member is subjected to visa requirement, (s)he receives a visa or if the person has not a valid passport, an authorization replacing the visa for a validity period of 3 months. In case that the family member cannot produce any of the abovementioned document, (s)he is notified with a discharge decision.

PART VI – ANY OTHER OBSTACLES

Question 24 – Other obstacles.

- ✓ *Are there any other de jure or de facto obstacles in your country as regards the acquisition or use of travel documents not addressed in your responses to the previous questions?*

(Again, the most interesting data for answering this final ‘catch-all’ question may perhaps be gleaned from diplomatic offices of other Member States in your country (or national complaint bodies such as Ombudsmen), or by contacting a selection of EU citizens to learn which specific other problems they have encountered.)

There are no other specific obstacles, *de iure* or *de facto*, regarding the acquisition or use of travel documents than the ones addressed so far when answering the questionnaire. Nonetheless the access to travel documents can be *de facto* an exhausted procedure for the mobile EU citizen, regarding the complexity to fully understand Belgian administration not only for language barriers but for the procedure itself. The procedure is settled out in different steps, since the start of the file by notifying the presence in the country and register in the foreign register to finally get the travel document is quite long. If in the first attempt to address the local authorities the EU citizen has all the requested documentation, then the foreigner can be considered (her)himself lucky otherwise a stressful period starts, trying to collect all the documentation and the most important to get it translated in the language of the municipality in where you desire to live.

The second step, after having handled all the necessary documentation is to receive the visit of the police to ensure the residence of the EU citizen. After the visit of the police and after they have submitted an inform to the municipality, then the municipality will submit the file to the Foreign Office to decide which type of resident permit is granted to the foreigner. After this step the Foreign Office submit the decision to the municipality which will send the necessary information to the manufacturing company in order to print the foreigner e-card. Then, when the foreigner e-card is manufactured is send back to the correspondent city and a letter is sent to the foreigner in order (s)he collects the document and activate the foreign e-card. So at the end the procedure takes much more longer than desirable for the foreigner.

NATIONAL PROVISIONS

- Loi du 15 Décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Wet betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen. *M.B./B.S.* 31 December 1980.
- Arrêté royal du 8 October 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers/ Koninklijk besluit betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen. *M.B./B.S.* 27 October 1981.
- Code du 28 Juin 1984 de la nationalité belge / Wetboek van de Belgische nationaliteit. *M.B./B.S.* 12 July 1984.
- Loi du 19 Juillet 1991 relative aux [registres de la population, aux cartes d'identité, aux cartes d'étranger et aux documents de séjour] et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques/ Wet betreffende [de bevolkingsregisters, de identiteitskaarten, de vreemdelingenkaarten en de verblijfsdocumenten] en tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen. *M.B./B.S.* 3 September 1991.
- Arrêté royal du 30 Octobre 1991 relatif aux documents de séjour en Belgique de certains étrangers. *M. B. /B.S.* 17 Decembre 1991.
- Loi du 8 Décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel / Wet tot bescherming van de persoonlijke levensfeer ten opzichte van de verwerking van persoonsgegevens. *M.B./B.S.* 18 March 1993.
- Loi du 15 Juillet 1996 modifiant la loi du 15 Décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 8 juillet 1976 organique des centres publics d'aide sociale / Wet tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen en van de organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijk welzijn. *M.B./B.S.* 5 October 1996.
- Arrêté royal du 10 Décembre 1996 relatif aux différents documents d'identité pour les enfants de moins de douze ans / Koninklijk besluit betreffende de verschillende identiteitsdocumenten voor kinderen onder de twaalf jaar. *M.B./B.S.* 20 December 1996.
- Arrêté royal du 23 Mars 2003 relatif aux cartes d'identité / Koninklijk besluit betreffende de identiteitskaarten. *M.B./ B. S.* 28 March 2003.
- Loi du 25 Mars 2003 modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques et la loi du 19 juillet 1991 relative aux registres de la population et aux cartes d'identité et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques / Wet tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen en van de wet van 19 juli 1991 betreffende de bevolkingsregisters en de identiteitskaarten en tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen. *M.B./B.S.* 28 March 2003.

- Arrêté ministériel du 26 Mars 2003 déterminant le modèle du document de base en vue de la réalisation de la carte d'identité électronique / Ministerieel besluit tot bepaling van het model van basisdocument met het oog op het opmaken van de elektronische identiteitskaart. *M.B./B.S.* 28 March 2003.
- Arrêté royal du 5 Juin 2004 déterminant le régime des droits de consultation et de rectification des données électroniques inscrites sur la carte d'identité et des informations reprises dans les registres de population ou au Registre national des personnes physiques/ Koninklijk besluit tot vaststelling van het stelsel van de rechten tot inzage en verbetering van de gegevens die op elektronische wijze opgeslagen zijn op de identiteitskaart en van de informatiegegevens die zijn opgenomen in de bevolkingsregisters of in het Rijksregister van de natuurlijke personen. *M.B./B.S.* 21 June 2004.
- Loi du 16 Juillet 2004 portant le Code de droit international privé/ Wet houdende het Wetboek van internationaal privaatrecht. *M.B./B.S.* 27 July 2004
- Arrêté royal du 1er Septembre 2004 modifiant l'arrêté royal du 25 mars 2003 portant des mesures transitoires relatives à la carte d'identité électronique / Koninklijk besluit tot wijziging van het koninklijk besluit van 25 maart 2003 houdende overgangsmaatregelen in verband met de elektronische identiteitskaart. *M.B. / B.S.* 15 Septembre 2004.
- Loi-programme du 27 Décembre 2004/ Programmawet. *M.B./B.S.* 31 December 2004.
- Arrêté royal du 15 Février 2005 déterminant la date d'entrée en vigueur et le régime du droit de prendre connaissance des autorités, organismes et personnes qui ont consulté ou mis à jour les informations reprises dans les registres de population ou au Registre national des personnes physiques / Koninklijk besluit tot vaststelling van de datum van inwerkingtreding en van het stelsel van het recht tot kennisname van de overheden, instellingen en personen die de informatiegegevens die zijn opgenomen in de bevolkingsregisters of in het Rijksregister van de natuurlijke personen hebben geraadpleegd of bijgewerkt. *M.B./B.S.* 28 February 2005.
- Arrêté royal du 18 Octobre 2006 relatif au document d'identité électronique pour les enfants belges de moins de douze ans / Koninklijk besluit betreffende het elektronisch identiteitsdocument voor Belgische kinderen onder de twaalf jaar. *M.B./B.S.* 31 October 2006.
- Arrêté royal du 7 Décembre 2006 fixant les spécifications et la procédure d'enregistrement des appareils de lecture pour la carte d'identité électronique et modifiant l'arrêté royal du 13 février 1998 relatif aux spécifications des appareils de lecture de la carte d'identité sociale / Koninklijk besluit tot vaststelling van de specificaties en registratieprocedure van de leesapparatuur voor de elektronische identiteitskaart en tot wijziging van het koninklijk besluit van 13 februari 1998 houdende specificaties van de leesapparatuur voor de sociale identiteitskaart. *M.B./B.S.* 12 January 2007.
- Arrêté royal du 21 Avril 2007 portant détermination du délai durant lequel les données biométriques, prises dans le cadre de l'article 30bis de la loi du 15 décembre 1980 sur

l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, doivent être conservés / Koninklijk besluit houdende vaststelling van de termijn gedurende welke de biometrische gegevens, die in het kader van artikel 30bis van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen werden afgenomen, dienen bewaard te worden. *M.B./B.S.* May 2007.

- Loi du 15 Mai 2007 confiant au comité sectoriel du Registre national la compétence d'autoriser l'accès aux informations du registre d'attente et du registre des cartes d'identité / Wet waarbij de bevoegdheid om toegang te verlenen tot de informatiegegevens van het wachtregister en van het register van de identiteitskaarten toevertrouwd wordt aan het sectoraal comité van het Rijksregister. *M.B./B.S.* 8 June 2007.
- Arrêté royal du 18 Janvier 2008 modifiant l'arrêté royal du 25 mars 2003 portant des mesures transitoires relatives à la carte d'identité électronique/ Koninklijk besluit tot wijziging van het koninklijk besluit van 25 maart 2003 houdende overgangsmatregelen in verband met de elektronische identiteitskaart. *M.B./B.S.* 28 February 2008.
- Arrêté royal du 1 October 2008 modifiant l'arrêté royal du 25 mars 2003 relatif aux cartes d'identité / Koninklijk besluit tot wijziging van het koninklijk besluit van 25 maart 2003 betreffende de identiteitskaarten. *M.B./B.S.* 7 November 2008.
- Arrêté ministériel du 3 Mars 2009 portant la décision de procéder à l'introduction généralisée du document d'identité électronique / Ministerieel besluit houdende beslissing om het elektronisch identiteitsdocument voor Belgische kinderen onder de twaalf jaar veralgemeend in te voeren pour les enfants belges de moins de douze ans. *M.B./B.S.* 11 March 2009.
- Arrêté ministériel du 15 mars 2013 fixant le tarif des rétributions à charge des communes pour la délivrance des cartes d'identité électroniques, des documents d'identité électroniques pour enfants belges de moins de douze ans et des cartes et documents de séjour délivrés à des ressortissants étrangers, dont l'annexe a été modifié par arrêté ministériel du 27 mars 2013 / Ministerieel besluit van 15 maart 2013 tot vaststelling van het tarief van de vergoedingen ten laste van de gemeenten voor de uitreiking van de elektronische identiteitskaarten, de elektronische identiteitsdocumenten voor Belgische kinderen onder de twaalf jaar en de kaarten en verblijfsdocumenten, afgeleverd aan vreemde onderdanen, waarbij de bijlage is gewijzigd bij ministerieel besluit 27 maart 2013. *M.B./B.S.* 21 and 28 March 2013.
- Arrêté royal du 22 Octobre 2013 modifiant l'arrêté royal du 10 décembre 1996 relatif aux différents documents d'identité pour les enfants de moins de douze ans / Koninklijk besluit tot wijziging van het koninklijk besluit van 10 december 1996 betreffende de verschillende identiteitsdocumenten voor kinderen onder de twaalf jaar. *M.B./B.S.* 21 March 2014.
- Le Code consulaire du 21 Décembre 2013 / Consulaire Wetboek. *M.B./B.S.* 21 January 2014.

- Arrêté royal du 24 Février 2014 exécutant l'article 6.6, de la loi du 19 juillet 1991 relative aux registres de la population, aux cartes d'identité, aux cartes d'étranger et aux documents de séjour et modifiant la loi du 8 août 1983 organisant un Registre national des personnes physiques / Koninklijk besluit tot uitvoering van artikel 6, § 6, van de wet van 19 juli 1991 betreffende de bevolkingsregisters, de identiteitskaarten, de vreemdelingenkaarten en de verblijfsdocumenten en tot wijziging van de wet van 8 augustus 1983 tot regeling van een Rijksregister van de natuurlijke personen. *M.B./B.S.* 28 February 2014.
- Arrêté du 28 Février 2014 ministériel relatif à la clôture de la période de renouvellement des cartes d'identité/ Ministerieel besluit betreffende het afsluiten van de vernieuwingsperiode van de identiteitskaarten. *M.B./B.S.* 6 March 2014
- Arrêté Ministériel du 19 Avril 2014 concernant la délivrance de passeports / Ministerieel besluit aangaande de afgifte van paspoorten. *M.B./B.S.* 4 June 2014.

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- *'Tourisme selon pays de provenance 2014'*, http://statbel.fgov.be/fr/modules/publications/statistiques/marche_du_travail_et_conditions_de_vie/tourisme_selon_pays_de_provenance_et_selon_type_d_hebergement_2014.jsp.

WEBSITE

- www.consilium.europa.eu
- www.diplomatie.belgium.be
- www.eid.belgium.be
- www.europa.eu
- <http://fr.zetes.be>
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- www.rvv-cce.be

WP 7 CIVIL RIGHTS
CASE-STUDY 7.6
ACCESS TO TRAVEL DOCUMENTS



UNIVERSITY OF COPENHAGEN

RAPPORTEUR: SILVIA ADAMO

PART I – TYPOLOGY AND FORMAT¹

Introduction

In order to assess the state of play with regard to potential obstacles in the access to and usage of travel documents, a logical first point of departure is to inquire which types are generally made available in the respective Member States, and whether those documents that fall within the ambit of Regulation 2252/2004/EC comply with the designated format there prescribed.²

Question 1 – Typology

- ✓ Which are the main types of travel documents that are in common usage in your country?

Please verify whether the information that you are able to provide corresponds with that officially registered in the PRADO database (<<http://www.prado.consilium.europa.eu/>>) – so that we might verify whether the latter is perhaps inaccurate or no longer up to date.

The types of travel documents in common usage in Denmark are:

- Passports: the Passport Act contains the rules administering issuance, children passports, fees, etc.³

¹ The sources of law included in the following analysis are updated as of 1 December 2015. The report has primarily been elaborated by Silvia Adamo, but supervised and/or commented upon throughout the process by Ulla Neergaard and Catherine Jacqueson.

² A commonplace assumption in EU law is that Regulations are applied uniformly, due to their direct applicability; this is however a matter that remains in need of empiric verification, since any actually present deviations might lead to hindrances that will still need to be addressed and eradicated.

³ Passport Act, LBK no. 900 of 08.09.2008, *Bekendtgørelse af lov om pas til danske statsborgere m.v. (pasloven)*, last amended by Act no. 176 of 24.02.2015, *Lov om ændring af lov om pas til danske statsborgere m.v., udlændingeloven og retsplejeloven (Styrket indsats mod rekruttering til væbnede*



- Visa: the Alien Consolidation Act states the validity of the EU visa code in Denmark⁴ and an Executive Order sets up the system for visa issuance.⁵
- Travel documents issued to non-nationals: There are two types of passport for foreigners living in Denmark who cannot obtain a passport from their country of origin: 1) a travel document issued in conformity of Convention of 28 July 1951 relating to the Status of Refugees (*Konventionspas*), for refugees holding a residence permit according to the rules in the said Convention; and 2) an Alien's Passport (*Fremmedpas*) for other categories of refugees, stateless individuals, and their family members.⁶

In some cases also driving licences and Danish residence permits can be used as travel documents. Driving licenses can e.g. be used for identification purposes in Denmark by Nordic citizens, as since 1953 Danish, Finnish, Icelandic, Norwegian and Swedish nationals can enter Denmark from Finland, Iceland, Norway and Sweden (i.e. the Nordic countries) and also travel to these countries without being in possession of a passport or another travel document.⁷ Moreover, residence permits issued by Danish authorities can be used by third country nationals who travel to other Schengen countries, in conjunction with a passport or another travel document.

The information in the PRADO database appears to be correct and updated as of December, 2015.⁸

konflikter i udlandet m.v.). See also Passport Executive Order BEK no. 1337 of 28.11.2013, *Bekendtgørelse om pas m.v.*

⁴ Aliens Consolidation Act, LBK no. 1021 of 19.09.2014, *Lovbekendtgørelse af Udlændingelov*, section 2a (4).

⁵ Visa Executive Order, BEK no. 376 of 20.03.2015, *Bekendtgørelse om udlændinges adgang til Danmark på grundlag af visum*.

⁶ Aliens Order (*Udlændingebekendtgørelsen*), BEK no. 375 of 20.03.2015, *Bekendtgørelse om udlændinges adgang her til landet*, sections 7-8.

⁷ AND no. 418 of 13.12.1952, *Kongelig anordning om pastvang*.

⁸ See <<http://www.consilium.europa.eu/prado/en/prado-documents/dnk/index.html>>.

Question 2 – Domestic follow-up rules to the main EU instrument

- ✓ Were any specific measures enacted in your country to give further effect to the main EU instrument regulating travel documents, i.e. Regulation 2552/2004/EC?

If so, please identify the relevant act(s)/law(s) and describe their location within the domestic legal hierarchy.

The Passport Act and its relative Executive Order have given effect to Regulation 2252/2004/EC in Denmark.⁹ The Act is in a higher position in the legal hierarchy as regards the Executive Order, meaning that the Act contains the general guidelines and rules regarding passports (fees, etc.), while the Executive Order concretises the content of the Act, specifying procedures, identifying the responsible authorities, etc.

Danish passports which have been issued since 1 August 2006 have contained a digital picture of the holder of the passport.¹⁰ However, the requirement of digital fingerprints has only been valid for passports issued from 1 January 2012. Although the requirement on biometric data in the passport should have been enforced since 2009, the Danish police encountered some problems as regards the tender for the company to deliver the technology behind the new passports.¹¹ The latest measure adopted in Denmark to give effect to Regulation 2252/2004/EC is from 2011.¹² To meet the Regulation's requirement the legal amendment from 2011 has introduced two IT-procedures (taking into account the authorities' capacities in this regard) for the taking and forwarding of the digital fingerprints to the company producing the passport booklets.¹³

⁹ See references under footnote 3.

¹⁰ See the comments to Bill LSF 202 2010/1, *Almindelige Bemærkninger*, at 2.

¹¹ < <http://www.dr.dk/nyheder/politik/pas-med-fingeraftryk-paa-vej>>.

¹² Act no. 613 of 14.06.2011 on amending the passport act for Danish citizens etc. and the Aliens Act (*Lov om ændring af lov om pas til danske statsborgere m.v. og udlændingeloven*).

¹³ Preparatory works to Bill L 202 2010-11, *Bemærkninger til lovforslaget* at 2.

Question 3 – Conformity with applicable standards and requirements

- ✓ Please verify whether the standards and requirements for (issuing) passports and travel documents adhered to in your country comply with those prescribed in Regulation 2552/2004/EC, including the requirements and pointers contained in its Annex.

In particular:

- Do the standards and requirements imposed refer to the mandatory inclusion of fingerprints in an interoperable format?
- Did your Member State designate a specific body for printing passports and travel documents? Please check whether that name was subsequently communicated to the Commission, and also indicate if the same body was designated by another Member State.
- Have the technical specifications referred to in Article 2 of the Regulation been published, or are they (in line with Article 3) kept confidential?
- Have the biometric features prescribed by the Regulation been integrally introduced for the passports and travel documents issued in your country?

(Note that, in line with Article 1(3) of the Regulation, this question does not pertain to identity cards issued by Member States to their nationals, or to temporary passports and travel documents having a validity of 12 months or less.)

Danish passports and travel documents comply with the standard requirements from Regulation 2252/2004/EC.¹⁴

The inclusion of digital fingerprint is mandatory since 2011 (also see Question 2 above). The administrative authorities (i.e. municipalities) collect the applications and digital data and then send them via the Central Passport Registry (*Det Centrale Pasregister*) and designated server to a private passports producing company. The private company Gemalto took over the issuance of passports in Denmark from the Danish State Police (*Rigspolitiet*) in 2004. The contract was renewed in 2010, when the digital fingerprints started to be included in the passport chip, alongside the digital

¹⁴ Preparatory works for Bill L 202 2010-11, *ibid*.



picture. The information on the five-year contract was released to the media and on the company's website.¹⁵ It has not been possible to verify, whether this information has been forwarded to the European Commission, but it was nonetheless made public. Gemalto published some technical specifications regarding the biometric passports, but it has not been feasible to ascertain whether there is observance of Article 3 of the Regulation in this regard.¹⁶

The Gemalto Company informs on its website that Belgium, Estonia, Denmark, France, Latvia, Malta, Portugal and Sweden are the EU Member States which have chosen its services for the issuance of the biometric services.¹⁷

Some of the municipalities also use the services of the software company Scan-Tech to transmit biometric data to the passport producing company. In March 2015 the association of municipalities, Local Government Denmark¹⁸ (KL), informed that 11.000 passports had been issued without the digital fingerprint, due to a software failure at Scan-Tech.¹⁹

Question 4 – Validity

- ✓ What is the general period of validity of (the different types of) travel documents that are in common usage in your country?
- ✓ Is prior (individual) warning issued to the bearer with regard to imminent expiry, and the need to renew the document(s) in question (e.g. via letter or e-mail notice)?

The general period of validity for Danish passports is 10 years from the date of issuance.²⁰ For applicants aged between 2 and 18 years, the validity period is 5 years, while for children under 2 years, the validity period cannot exceed 2 years.²¹

¹⁵ <<http://www.version2.dk/artikel/politiet-skriver-ny-kontrakt-med-pas-leverandoer-til-800-mio-16741>>, <http://www.gemalto.com/press/Pages/news_841.aspx>.

¹⁶ See the information available at <<http://www.gemalto.com/govt/customer-cases/denmark>>, and the Danish ePassport initiative on the same page.

¹⁷ <<http://www.gemalto.com/govt/travel>>.

¹⁸ *Kommunernes Landsorganisation*, in short KL, is the interest group and member authority of Danish municipalities.

¹⁹ <<http://www.kl.dk/Administration-og-digitalisering/Borgere-har-faet-fejlbehaftede-pas-id177085/>>.

²⁰ Passport Executive Order, BEK no. 1337 of 28.11.2013, *Bekendtgørelse om pas m.v.*, section 20 (1).

²¹ Passport Executive Order, section 20 (2-3).



Generally, prior (individual) warning to the bearer with regard to imminent expiry is not issued. Nonetheless, the Immigration Service has published an information leaflet on its website for children under 18 years old, who are family members to refugees in Denmark and thus bearers of an Alien's passport. When the children approach 18 years of age, they are urged to contact the embassy of their parents' country of origin and apply for a passport. Only in the case the application is negative will Denmark issue another Alien's passport after they reach the legal age.²²

PART II – ACQUISITION, RENEWAL AND LOSS

Introduction

Next, we take interest in collecting information with regard to the acquisition process, on where and how the documents are to be procured, and at what price. Equally worthy of note will be any possible deviations applied in the situation of renewal or loss, including withdrawal, since these might prove more protracted, costly, or otherwise pose hindrances. We first focus on the situation for own nationals and then consider the situation for resident EU citizens.

Question 5 – Venue, costs and timeframe

- ✓ At which office in your country are travel documents ordinarily to be obtained? Please include in your answer details on whether or not an application can be made digitally (even when the documents still have to be picked up in person).
- ✓ Which costs are associated with the acquisition of the different types of travel documents issued in your country? Please distinguish between the various categories, where appropriate, and convert any sums in other currencies, where applicable, to EUR.
- ✓ What is the standard timeframe for delivery (i.e. between formal application and actual obtaining of the document in question)? Please also indicate if special limitations apply in case of urgency, and what additional costs (if any) are incurred in such cases.

²² See <<https://www.nyidanmark.dk/NR/rdonlyres/A271863C-1026-46E9-AB01-F58CD9F465A0/0/Ungeunder18meddanskfremmedpas.pdf>>.



Since 2007, the Danish municipalities took over from the Police the responsibility to handling the issuance of passports to Danish nationals. The citizen service centres (*Borgerservice-centre*), which also deal with other administrative services, are the designated handling authorities. The Copenhagen municipality has also set up citizen service centres KVIK (*Borgerservice KVIK*) at different libraries where it is possible to file an application for passport. The applicant has to file a digital application according to the Executive Order on Passports, but the municipalities can assist the citizen who can prove not to be able to use the digital solution.²³

The cost for a passport is dependent on the age of the applicant²⁴:

- Passports for children under 12 years of age cost 115 DKK (ca. 15,42 €).
- Passports for children from 12 to 18 years cost 141 DKK (ca. 18,90 €).
- Passports for adults between 18 and 65 years of age cost 626 DKK (ca. 84,93 €).
- Passports for adults above 65 years of age cost 376 DKK (ca. 50,40 €).
- A digital picture for a new passport costs 95 DKK (ca. 12,74 €) in the Copenhagen Municipality.²⁵
- The cost of taking the fingerprints (26 DKK, ca. 3,49 €) is included in the prices indicated above (not requested for children under 12 years of age).

The standard timeframe for delivery of passports is 14 days. In special cases the passport can be obtained faster: If the passport is expired or lost, and the citizen has to travel within a short timeframe, a provisional passport (*nødpas* or *provisorisk pas*) can be provided right away.²⁶ The provisional passport is not accepted by all countries, among other things because it does not contain a chip with the fingerprints of the bearer. The citizen has therefore to check beforehand with the authorities of the country to which he/she is travelling whether the provisional passport will be accepted. The price and general conditions for the provisional passport are the same, though if a new passport is ordered at the same time that the provisional passport is requested, the extra-cost will be waived.

²³ Passport Executive Order, section 5.

²⁴ The prices (not adjusted to 2015-levels) are listed in section 4a of the Passport Act, LBK no. 900 of 08.09.2008, *Bekendtgørelse af lov om pas til danske statsborgere m.v. (pasloven)*. The prices/fee for taking digital fingerprints are regulated once a year, see section 4b (2) of the Passport Act.

²⁵ See information on <<http://www.kk.dk/pas>>.

²⁶ Passport Executive Order, section 24.

Question 6 – Deviations in case of renewal or loss

- ✓ Does a different procedure apply in case of an application for renewal of an earlier document, rather than a first-time acquisition? If so, please highlight the specific deviations, and also indicate whether a reduced tariff is applicable in such cases.
- ✓ Does a different procedure apply in case of an application due to loss of a previous document, rather than a first-time acquisition? If so, please highlight the specific deviations, and indicate whether a surcharge imposed for such cases.

It is possible to extend the validity of the passport if the request is presented until 3 months after the expiration date of the passport.²⁷ The extension is free of charge but can only be done once. The extension is made with a stamp in the passport and will be given only for the duration of an upcoming travel, and cannot exceed one year.²⁸ It is necessary to be present in person in case of application for extension of a passport. In case of a children's passport, both parents sharing custody over a child have to sign the application for extension.

Apart from the case of extension, every renewal of a passport is treated as an application for a new passport; therefore the procedure, price, and other conditions are the same. The only difference is that an old passport has to be presented in case of application for a new passport because the old one expired. In the case of application for a passport for the first time, the citizen must present other types of documentation for their identity, for example a driving licence in a credit card format or a birth certificate supplemented with another type of identity document with a picture on (e.g. a fold-up driving licence or a Danish bank credit card).²⁹

Every new passport has to have a new digital picture.

In case of loss of a passport, there is no surcharge imposed. However, the citizen will have to file a declaration about the loss when applying for a new passport. The declaration is made under penalty of the law (Danish Criminal Code section 163) that the information provided is correct and that the citizen would deliver the old passport in case it came into their possession again. The information regarding the loss of the

²⁷ Passport Executive Order, section 21 (1).

²⁸ Passport Executive Order, section 21 (2).

²⁹ Passport Executive Order, section 6.

passport is communicated to the Civil Registration Office (*Central Personregister*) and also to the Schengen Information System, which contains information about stolen or lost ID-documents. The National Commissioner for Danish Police (*Rigspolitichefen*) is the designated data controller in this regard.

Question 7 – Grounds for withdrawal

- ✓ On which grounds are public authorities in your Member States entitled to withdraw a person's passport?
- ✓ Are these grounds for withdrawal considered compatible with the substantive and procedural requirements imposed by Articles 27 and following (public policy, public security, public health, access to judicial remedies etc.) of Directive 2004/38/EC?

(Note that this question does not pertain to withdrawal of nationality, which is a different matter, and that ID cards normally cannot be withdrawn.)

The Passport Act, section 2, states the grounds for denial or withdrawal of a passport.³⁰ False passports can be confiscated by the Police according to the general rules in the Administration of Justice Act (*Retsplejeloven*). The list of grounds for withdrawal is exhaustive and comprehends the following cases:

- When charges are pressed against the person concerned for a criminal offence which can be presumed to carry a sentence of imprisonment, and on the merits of the case or the circumstances of the suspect there is a reason to expect that they will avoid the responsibility by exiting the country and staying abroad;³¹
- When the person concerned has been imposed a sentence of imprisonment which has not been served yet, or they have been imposed a pecuniary penalty or confiscation, which has not been paid, or for which no guarantee has been provided, and on the merits of the case or the circumstances of the suspect there is a reason to expect that they will avoid the responsibility by exiting the country and staying abroad;³²
- When the departure of the person concerned go against rules in the law that have as an objective to ensure the presence of a person in the country, until they have

³⁰ The following grounds are reported in my translation.

³¹ Passport Act, section 2 (1, no. 1).

³² Passport Act, section 2 (1, no. 2).

- fulfilled the obligations they have towards the public authorities or private persons;³³ or,
- When there are grounds to presume, that the person concerned has the intent to participate in activities abroad, where this can imply or increase a danger for the state security, other states' security or a considerable threat against the public order.³⁴

This last ground for withdrawal has been introduced in 2015, in an effort to prevent that Danish nationals leave the country to reach conflict areas abroad (e.g. Syria or Iraq) for the purpose of participating in activities which will increase their capacity and/or will to commit serious criminal offences upon their return.³⁵ The rule can be applied whether the concerned person is in Denmark or abroad, and the decision is based on a concrete opinion/evaluation (*konkret skøn*) by the Police of whether the information is sufficient to confirm the suspicion. As an example, information that can confirm a suspicion is information about a person who is a member of a radicalized environment who has expressed a wish to travel to Syria to participate in the fighting or to sustain them in another way; also information about a stay in a conflict area without a credible objective can confirm a suspicion and thus be ground for withdrawal of a passport.³⁶ The Police applied the new rule in October 2015 and issued a one-year travel ban and seized the passport of a 21 year old Danish-Kurdish woman who had been travelling to Syria to join the Peshmerga armed forces against ISIS.³⁷

Denmark implemented Directive 2004/38/EC by means of Executive Order (popularly referred to as *EU-opholdsbekendtgørelsen*).³⁸ The relationship with the new ground for denial or withdrawal of a passport with the rule in Article 27 in the Directive has been examined at the time of presentation of the bill, as denial or withdrawal of a passport can hinder the free movement of Danish nationals to another Member State.³⁹ However, the Ministry of Justice found that the considerations behind the new rules were in line with EU law considerations on public order and security. The measures are proportional

³³ Passport Act, section 2 (1, no. 3).

³⁴ Passport Act, section 2 (1, no. 4).

³⁵ By means of Act no. 176 of 24.02.2015. *Lov om ændring af lov om pas til danske statsborgere m.v., udlændingeloven og retsplejeloven (Styrket indsats mod rekruttering til væbnede konflikter i udlandet m.v.)*. the comments to Bill LSF 99 2014/1, *Forslag til Lov om ændring af lov om pas til danske statsborgere m.v., udlændingeloven og retsplejeloven (Styrket indsats mod rekruttering til væbnede konflikter i udlandet m.v.)*, at 2.3.1. *Betingelser for at nægte udstedelse af et pas eller inddrage et allerede udstedt pas og meddele et udrejseforbud*.

³⁶ See the comments to Bill LSF 99 2014/1, *Bemærkninger til lovforslagets enkelte bestemmelser, Til § 1 (Pasloven), Til nr. 4 (§ 2, stk. 1, nr. 4)*.

³⁷ See <<http://www.b.dk/nationalt/politiet-tager-passet-fra-dansk-kurdiske-joanna-palani>>.

³⁸ EU Residence Executive Order, BEK no. 474 of 12.05.2011, *Bekendtgørelse om ophold i Danmark for udlændinge, der er omfattet af Den Europæiske Unions regler (EU-opholdsbekendtgørelsen)*.

³⁹ See the comments to Bill LSF 99 2014/1, *Almindelige Bemærkninger*, at 10.

in that they do not go further than necessary to safeguard the said considerations, involving a concrete evaluation in every case where a suspicion arises. Moreover, the rule foresees a number of exceptions and possibilities for issuing a provisional passport in the case of a specific travel purpose which is found admissible. Finally, the normal Danish administrative rules on consultation with the party involved, motivated decision, and guidance for complaints are also applicable in these cases. For these reasons the Ministry of Justice found that the new rule introduced for denial or withdrawal of passport was in line with EU law.⁴⁰

As regards case law on the issue of withdrawal, two cases noted the withdrawal in cases of tax fraud. In the first one, the criminal proceedings against the passport holder were expected to lead to a prison sentence of several months and a considerable amount of back-pay.⁴¹ In another case of tax fraud the passport holder was charged for tax evasion of around 1 million DKK, and had taken up fast residence abroad, where his family also lived.⁴²

In another recent case, the passport holder had been charged on count of attempt of terrorism, and his passport had been withdrawn under a case tried by a jury. The defendant was 18 years old, born in Denmark, with Moroccan parents, and had family in Morocco which he had visited almost every summer. The Police's decision not to deliver his passport while a renewed trial proceeding was pending was approved.⁴³ In 2013, five persons were charged with preventive custody in absentia and passport withdrawal in a very locally known case of embezzlement and tax fraud of public funding for 'Tvind' private schools.⁴⁴

As regards withdrawal in cases as foreseen by the Passport Act section 2 (1, no. 3)⁴⁵ two cases can be mentioned here. In one of the cases, there was no legal basis to withdraw a passport of a person who had an outstanding amount of child support to pay, since the municipal authorities had not made a decision on recovery of the amount.⁴⁶ In another case the courts found that the conditions for withdrawal of a passport were met, since the outstanding amount of maintenance payment was considerable; the debtor had

⁴⁰ See the comments to Bill LSF 99 2014/1, *Almindelige Bemærkninger*, at 10.

⁴¹ U 1988.317 H – Danish Weekly Law Gazette (*Ugeskrift for Retsvæsen*).

⁴² U 1988.700 H – Danish Weekly Law Gazette (*Ugeskrift for Retsvæsen*).

⁴³ U 2007.2296 Ø – Danish Weekly Law Gazette (*Ugeskrift for Retsvæsen*).

⁴⁴ U 2013.3271 V – Danish Weekly Law Gazette (*Ugeskrift for Retsvæsen*). The accused were tried in the *Tvind* case.

⁴⁵ When the departure of the person concerned go against rules in the law that have as an objective to ensure the presence of a person in the country, until they have fulfilled the obligations they have towards the public authorities or private persons.

⁴⁶ U1999.899V – Danish Weekly Law Gazette (*Ugeskrift for Retsvæsen*).

previously stayed abroad for longer periods without continuously making the maintenance payments; the debtor had stated that he intended to travel abroad again; and finally he had not provided security in this regard.⁴⁷

Question 8 – Acquisition by non-nationals at public offices

- ✓ Which types of travel documents, if any, can be obtained at public offices in your Member State by nationals of other Member States?
- ✓ If nationals of other Member States can indeed obtain such documents at public offices in your Member State, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)
- ✓ With regard to the applicable procedure, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. longer/shorter timeframes)
- ✓ With regard to the associated costs, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. surcharges)
- ✓ Is it mandatory for long-term residing EU citizens to have registered their presence with the relevant authorities beforehand (in line with Article 8(1) of Directive 2004/38/EC, if implemented in your Member State) before they are able to apply for said documents?
- ✓ Is information on the acquisition of the relevant travel documents adequately made available in (at least the main) other EU languages?

Denmark does not issue e.g. identity cards that can be used as a valid travel document as it is the case in other Member States, neither to Danish citizens nor to foreign citizens. Thus, as passports are the most commonly used travel documents in Denmark, nationals of other Member States have to contact the consulate of their country of nationality in order to obtain a travel document.

For those who cannot obtain a passport from their country of nationality (and can attest their attempt in this regard), the Danish authorities will issue travel documents for refugees and Aliens' passport, primarily to third country nationals. These documents can be obtained at the Danish Immigration Service (*Udlændingestyrelsen*), which is

⁴⁷ U2001.922V – Danish Weekly Law Gazette (*Ugeskrift for Retsvæsen*).



located in the Copenhagen capital city.⁴⁸ Applicants who live outside of the capital region can apply at the police stations in the country which are equipped to register biometric data. The Immigration Service informs that at this moment there are 13 police stations with that capacity, thus a fewer number than Citizen Service Centres where Danish passports can be issued.⁴⁹ The timeframe for delivery of these kinds of passports is 10 weeks, hence five times longer than a Danish passport delivery time. If the applicant is also applying for renewal of residence permit or for a permanent residence permit, the timeframe for delivery will be longer. In case of renewal of travel documents and Aliens' passport, the timeframe is reduced to 10 days or immediate renewal if the applicant meets in person at the Danish Immigration Service (this will be valid only in simple cases where there is no need to further investigate the application).

The applicants have to prove that they have tried to obtain a passport from their country of origin, e.g. by attaching to the application a letter from the consulate/embassy concerned. This requirement is not applied to applicants with refugee status or stateless individuals.

The prices for travel documents and Aliens' passports are the same as the ones for Danish passports, and they are also determined on the basis of the applicant's age. In case an application for Aliens' passport cannot be granted, the cost of the application fee will be reimbursed.

If an applicant has a residence card, it has to be included in the documentation for identity.

The information on passports to foreign nationals is provided in Danish and English on the Immigration Service's website, while the application is provided exclusively in Danish in the paper version, and in a Danish/English version for online applications.⁵⁰

⁴⁸ The Danish Immigration Service is going to be relocated during the year 2016 to Næstved, a small city ca. 80 km from Copenhagen.

⁴⁹ See <http://www.nyidanmark.dk/da-dk/Ophold/opholdskort_med_biometri/politistationer_der_optager_biometri.htm>.

⁵⁰ See <http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/passport_application.htm>, and <<http://www.nyidanmark.dk/da-dk/Blanketter/SearchForms.htm?SearchType=forms&Subject=Pas%20til%20udl%C3%A6ndinge&PerformSearch=True>>.

Question 9 – Policy for extension and renewal in consular representations in other Member States

- ✓ Does your Member State adhere to a uniform general policy with regard to the extension or renewal of travel documents at its consular representations abroad, or do the conditions and procedures applied differ per country?
- ✓ Compared to nationals resident in your own country, do any additional conditions and requirements apply at your Member State's consular representations in other countries, when nationals resident in those other countries seek to obtain or renew travel documents?
- ✓ Are reduced rates applicable for specific categories of persons (e.g. costs waived for recipients of social benefits)?
- ✓ Which information and certificates are nationals of your own country expected to adduce at consular representations in other EU Member States when they there wish to apply for travel documents for a newborn child?
- ✓ Are authenticated translations required, or are the original copies, accompanied by informal transcripts, considered as equivalent and acceptable for the issuing of such travel documents?

Extension and renewal of travel documents at Danish consular representations abroad follow a uniform general policy *as a starting point*, as to say, there are common rules regarding which documentation has to be presented, which application form to fill in, etc. However, in practice, the Ministry of Foreign Affairs of Denmark informs that, since 2012 it has become more difficult for Danes living abroad to obtain a new passport, as the new biometric requirements entail that the consulates abroad have to be in possession of special technical equipment for the registration of the biometric data.⁵¹ Only the diplomatic representations equipped with the new technology (to take digital pictures, fingerprints, and signatures) which also have access to the Central Person Registry and the Central Passport Registry have been able to accept applications for passports that meet the new standards. Thus, in some countries the Ministry of Foreign Affairs of Denmark has had only one embassy/location able to issue the new type of passport (e.g. only the Paris Embassy in France, recently adding Nice, and only the Dublin Embassy in Ireland), while in other Members States it refers to consulates or embassies in other countries close by (e.g. the Danish representation in Estonia and Lithuania refer to the Riga Embassy, the Warszawa Embassy, or the Helsingfors

⁵¹ See the information on <<http://frankrig.um.dk/da/rejse-og-ophold/borgerservice/pasudstedelse/>>.



Embassy for all other passport except passports for children under 12 years of age, who are not required to include digital fingerprints in their travel documents).⁵²

In order to relieve the inconveniences deriving from having only few representations able to issue the biometric passports, Denmark introduced in some of its consular representations (both in and outside of the EU) so-called 'biometric suitcases'. Equipped with a biometric suitcase, a consular staff member with a mobile biometric kit visits selected Honorary Consulates in order to record biometric data of applicants for Danish passports on a periodic basis.

The Ministry of Foreign Affairs of Denmark informs that it is easier, faster and cheaper for Danes to apply for a new passport when they are on a visit in Denmark.⁵³ Any municipality can process the application, even if the Danish national is not living in Denmark. Moreover, in case of short stays, it is possible to have the new passport sent afterwards to a consulate abroad against the payment of a fee.

No reduced rates are applicable for specific categories of persons. The fee for a passport issued in a Danish consulate in the EU is a flat rate of €129 for all types of passports (i.e. passports for Danish nationals, emergency passports, travel documents and Aliens' passports).⁵⁴ The price for documents obtained outside the normal working hours is much higher: either €525 (outside the representation's office hours) or €750 (on the representation's official closing days).⁵⁵

For travel documents for a new-born child, the child has to be present with both parents who share custody over the child. Since 2004 children are required to have their own passports. The required documentation is a birth certificate, a certificate of baptism or a name certificate, passport photographs, and a filled application form (standard formulary). Moreover, both parents sharing legal custody of the child have to sign a declaration of consent (*samtykkeerklæring*) on the application form. The parents' passports are also required, and if one of the parents is not a Danish national, his/her passport or ID-card has to be presented as well. For children born outside of Denmark

⁵² The Embassy of Denmark in Portugal cannot issue passports either.

⁵³ For example as informed on the website of the Ministry of Foreign Affairs of Denmark in France, see <<http://frankrig.um.dk/da/rejse-og-ophold/borgerservice/pasudstedelse/>>.

⁵⁴ The rates are set in a Fee Executive Order, BEK no. 1459 of 16.12.2014, *Bekendtgørelse om betaling for tjenestehandlinger i udenrigstjenesten*, and a relative Circular, VEJ no. 9023 of 23.12.2014, *Vejledning til bekendtgørelse om betaling for tjenestehandlinger i udenrigstjenesten*. For a table of the prices see the annex to the circular, also published at <<http://um.dk/da/~media/UM/Danish-site/Documents/Rejse-og-ophold/Oversigt%20over%20gebyrsatser%20for%20borgerservice%20og%20andre%20sager%20pr%201%20januar%202015.pdf>>.

⁵⁵ Section 21 of the Fee Executive Order.



before 1 July 2014, whose mother is not Danish, a marriage certificate is also required.⁵⁶ The application fee is €129.

The required documents (birth certificates, passports, marriage certificates) have to be the original documents, but to the best of our knowledge they do not need to be translated beforehand.⁵⁷

Question 10 – Acquisition for new-born children of non-nationals at domestic public offices

- ✓ Is it possible for non-nationals to obtain travel documents for a new-born child at the domestic public offices in your Member State? *If not, skip to Question 9.*
- ✓ If so, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)
- ✓ If the possibility is there, which information and certificates are non-nationals expected to adduce at national public offices when applying for travel documents for a new-born child?
- ✓ If the possibility is there, is the timeframe for the issuing of such travel documents noticeably longer or shorter, as compared to when own nationals apply for travel documents for their children?

New-born children who have non-Danish nationals parents can only obtain travel document passports if they are children of recognized refugees (i.e. with a lawful permission to stay in Denmark), or stateless at birth. In these cases, as it is not possible for these children to have a nationality passport at their country of origin, they can obtain an Alien's passport (refer to Question 8 above for acquisition for non-nationals for new-born children who do not fall into these categories, i.e. new-born children of Union citizens).

Thus, the venues, documents to be presented, application form, and timeframe for issuing a travel document to a non-national child born in Denmark are the same as those related to adults' passport, and which are described in detail under question 8. The

⁵⁶ Before a recent change to the Citizenship Act, children born outside of Denmark by a Danish father and foreign mother did not acquire Danish citizenship at birth automatically, but only if the parents were married.

⁵⁷ No information about a requirement to translate original documents in this regard is mentioned on the websites of the Danish representations abroad in the EU.

prices are the same as Danish children's passport, as to say 115 DKK (ca. 15,42 €) for children up to 12 years of age and 141 DKK (ca. 18,90 €) for an Aliens' passport for children from 12 to 18 years old. In case an application for Aliens' passport cannot be granted, the cost of the application fee will be reimbursed.

Question 11 – Travelling with minors

Background example (fictitious)

Lena is a twelve-year old Austrian girl from Vienna, taken out by her Turkish stepfather for a mini-holiday to be spent in Istanbul. They travel by car, intending to pass through Hungary, Romania and Bulgaria along the way.

Arriving at the border between Hungary and Romania, she and her stepfather are stopped by two immigration officers, and requested to produce a written statement from Lena's mother confirming that she consents to the trip, before they are both allowed to continue their journey.

- ✓ In addition to their own valid travel document, does your country require minors travelling alone to produce any extra (official) documents signed by their parents or legal guardian(s) authorising them to travel?
- ✓ In addition to their own valid travel document, does your country require minors travelling with adults who are not their legal guardian to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?
- ✓ In addition to their own valid travel document, does your country require minors travelling with only one parent to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?

Minors entering Denmark are not required to provide any extra official travel document signed by their parents or legal guardian(s) authorising them to travel. Minors are only requested to be in possession of their own, personal travel document, i.e. a passport. Children up to 15 years of age can also enter Denmark with a valid ID-card only. This is applied in cases whether they travel alone, or they travel with adults who are not their legal guardian, or they travel with only one parent.



Children of Italian nationality travelling with an identity card are not required to have a passport only if they are accompanied by one of their legal guardians.⁵⁸

The Ministry of Foreign Affairs of Denmark informs that children travelling outside of Denmark may be required to provide further documentation than a passport when travelling alone, with only one parent, or with another adult who is not a legal guardian. The Ministry thus urges travellers with children to contact the relevant embassies of the countries they plan to visit in order to get all the relevant documentation in order before their trip.⁵⁹

⁵⁸ In accordance to the passport and visa promulgation, *Justitsministeriets kundgørelse om pas- og visumforhold af 17. december 2013 som ændret den 1. maj 2014*.

⁵⁹ See information available at <<http://um.dk/da/rejse-og-ophold/rejse-til-udlandet/boern-unge-pensionister-paa-rejse/>>.

PART III – INCLUSION OF BIOMETRIC DATA AND ITS EFFECTS

Introduction

Council Regulation 2252/2004/EC requires Member States to collect and store biometric data, including fingerprints, in the storage medium of passports and other travel documents, and require that such data be used for verifying the authenticity of the document or the identity of the holder. Further measures may be introduced with regard to the processing and use of such data, or requiring the inclusion of additional biometric data going beyond the scope of the Regulation. The adoption of the domestic rules concerned may have given rise to controversies, and they could potentially have had a ‘chilling effect’ on the acquisition of travel documents. This warrants further inquiry, also e.g. with regard to possibly instigated judicial or non-judicial procedures attempting to curb the discretionary powers exercised by the Member State legislature, and/or targeting the underlying EU instrument.

Question 12 – Inclusion of fingerprints (pursuant to EU law) and its possible effects

- ✓ Did your country already introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents *before* the adoption of Regulation 2252/2004/EC? *If so, skip to Question 13!*
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?
- ✓ Do citizens generally experience the inclusion of biometric data in passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the adoption of the Regulation (e.g. on the number of passports issued).

Danish passports issued since 1 January 2012 are equipped with a chip containing fingerprints data. Before the adoption of Regulation 2252/2004/EC Denmark had not



introduced measures requiring the collection and retention of fingerprints data for use in connection with travel documents.

To the best of our knowledge there were no non-judicial or judicial objections or protests launched against the inclusion of biometric features in passports and travel documents. No decisions were found in this regard neither in the database of the Danish Data Protection Agency,⁶⁰ nor in the Danish Weekly Law Gazette.⁶¹ At the time of the hearing of the new Passport Order in the Parliament (introducing the requirement of the collection of digital fingerprints), The Danish Institute for Human Rights⁶² and the Danish Data Protection Agency⁶³ pointed out that it would have been desirable to carry out a Privacy Impact Assessment (PIA analysis) in order to ensure that, even with the taking of the biometric features, the citizens' right to privacy and personal data would still be protected. The Danish Data Protection Agency also warned about the need to establish effective security measures for the protection of the collected data (the system has later indeed proven not to be infallible in this regard), and also about the possibility of handling the information on fingerprints separated from other personal information, which could easily identify the applicant.⁶⁴

It was also not possible to find data on how citizens generally experience the inclusion of biometric data in passports and travel documents. The data available on the number of national passports issued in Denmark is slender. In 2005, Denmark issued 400.000 – 450.000 passports⁶⁵, while in 2010 the number was up to 700.000⁶⁶ and in 2015 the Ombudsman mentions in a decision, that the municipalities handle about 600.000 applications for passports a year.⁶⁷ These data can however not constitute enough indicators on whether the inclusion of biometric features had a 'chilling effect' on the (rate of) applications for obtaining or renewing travel documents in Denmark.

⁶⁰ The archive over the Agency's decisions is available at <<http://www.datatilsynet.dk/afgoerelser/seneste-afgoerelser/>>.

⁶¹ *Ugeskrift for Retsvæsen*. The Danish Weekly Law Gazette does not, however, publish all judicial cases in Denmark.

⁶² Institut for Menneskerettigheder, *Høring over udkast til bekendtgørelse om ændring af bekendtgørelse om pas m.v.*, 14.11.2011.

⁶³ Retsudvalget 2010-11, L 202 Bilag 1, Datatilsynet, *Vedrørende høring over ændring af pasloven*, 25.03.2011.

⁶⁴ *Ibid.*

⁶⁵ Preparatory Works, *Forslag til lov om ændring af færdselsloven og pasloven (Kommunernes varetagelse af visse opgaver på kørekort- og pasområdet som led i kommunalreformen)*, *Almindelige Bemærkninger*, at 3.1.

⁶⁶ <<http://politiken.dk/rejser/nyheder/sundhedogsygdom/ECE1121667/over-22000-danskere-glemmer-passet-hvert-aar/>>.

⁶⁷ Decision 2015-28 of 20.05.2015, *Afslag på udstedelse af nyt pas savnede hjemmel og var i strid med reglerne om sagsoplysning og bevisbedømmelse* [Refusal to issue new passport lacked legal basis and was contrary to the rules on statement of facts and assessment of evidence].

Question 13 – Inclusion of fingerprints (unilaterally) and its possible effects

(only to be answered in continuation of Question 12, first sub-question!)

- ✓ When did your country introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents?
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?
- ✓ Do citizens generally experience the inclusion of biometric features in the passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the mandatory introduction of biometric features in your country (e.g. on the number of passports issued).

This question is not relevant as far as Denmark is concerned, as instructed by question 12 above.

Question 14 – Processing of biometric data and possible objections thereto

- ✓ Did the measures introduced in your country requiring the collection and retention of the fingerprint data for use in connection with travel documents indicate where the data is to be kept, or is this otherwise known (e.g. a central registry)?
- ✓ In case such data is kept in a central registry, does domestic law allow for it to be used / processed also for other purposes, such as national security, prevention of crime and identification of disaster victims?
- ✓ In case such data is kept in a central registry, and domestic law allows for it to be used / processed also for other purposes, was this leniency introduced openly and without (public) resistance?
- ✓ In case there was (public) resistance and if there were objections lodged, either during the parliamentary process or in subsequent court procedures, what were the outcomes and effects of these actions?

The data collected in connection with an application for a Danish passport are registered in the Central Passport Registry (*Det Centrale Pasregister*), which collects information about persons with passports issued by the Danish authorities. The Central Passport Registry was created already in 1986, with an aim to act as a general inventory for passport application forms.⁶⁸ The local passport registries were abolished, and the new registry made it possible to apply for a passport in every police district of Denmark, and not only in the applicant's police district of residence.

A digital passport registry was introduced in 2012 in order to collect the new type of data.⁶⁹ The digital data are also handled in the Registry for Passport Production (*Registeret for Pasproduktion*), which contains information that is necessary for the production of passports, the production control, and the inventory control. It is the Danish National Police (*Rigspolitiet*) which handles the register and is the data controller.⁷⁰ Access to the information in the Central Passport Register can be obtained by contacting the Danish National Police.

⁶⁸ See the previous Passport Act, LBK no. 586 of 1.9.1986 and CIS no. 128 of 27/08/1987, *Cirkulærskrivelse til politiet om ny pasbekendtgørelse og nyt pasregister*.

⁶⁹ The upgrading of the Passport Registry to collect locally the new biometric data was a difficult and expensive task that took many years to be implemented, see article available at <http://ing.dk/artikel/enorm-dataopgave-forsinker-nye-pas-med-fingeraftryk-94882>.

⁷⁰ Preparatory works to Bill L 202 2010-11, *Bemærkninger til lovforslaget* at 2.



At the time of the amendment of the Passport Act and Passport Order, the Ministry of Justice informed that the biometric data collection in the Central Passport Registry should not be used for any other purpose than passport production. The biometric data are only collected in order to produce and make the passports safer as regards falsification – in line with the Act on Processing of Personal Data, which states that the information collected may only be used for the purpose they have been taken for.⁷¹ They are only retained until the passport is produced, stored in the chip, delivered to the applicant, and then deleted. The fingerprints cannot be used for other purposes. Other types of information (e.g. the holder's CPR number – national ID number – and the passport numbers) can be stored in the Passport Registry and can be accessed by other authorities, e.g. municipal authorities to control if there is any annotation in the passport registry that speaks against issuing a new passport to an applicant.⁷²

An interesting case that revolves around the Central Passport Registry may be mentioned here. The data collected in the Central Passport Registry are handled by CSC (a Danish IT company that retains and handle the data on its server for the Danish State). CSC was victim of a hacker-attack from April to August 2012, where data from the Schengen Information System and about 90.000 CPR numbers were downloaded for unknown purposes. The hacker was a Swedish national, co-founder of the file sharing site 'Pirate Bay' – Gottfrid Svartholm Warg – who with a Danish accomplice was found guilty and sentenced to three and a half years in prison by a city court.⁷³ Later the High Court of Eastern Denmark (*Østre Landsret*) confirmed the sentence.⁷⁴

The case exposed the vulnerability of the data collection system in the first and also quite severe hacking attack on Danish personal data. The National Audit Office has formally criticized the Danish Police for not having updated their IT-systems and thus rendered them vulnerable towards hacker attacks, and for not adequately monitoring the data controllers who have access to the sensitive personal data.⁷⁵ The Danish Data Protection Agency has also recently (31.07.2015) found that the Danish National Police

⁷¹ Act on Processing of Personal Data (Act No. 429 of 31 May 2000), section 5. See in this regard B. Kofod Olsen (2004), *Passet og (U)Sikkerherden. Om Biometri og Integritetsbeskyttelse*, in J. Gulddal and M. Mortensen (eds.) *Pas – Identitet, Kultur og Grænser*, Informations Forlag, p. 152.

⁷² Passport Executive Order, section 12.

⁷³ Nævningeting på Frederiksberg (City Court sitting with a jury), see ruling at <<http://www.domstol.dk/frederiksberg/nyheder/domsresumeer/Pages/Afg%C3%B8r%C3%B8rseafskyldssp%C3%B8rsm%C3%A5letisagomhackingafCSC.aspx>>.

⁷⁴ <<http://www.dr.dk/nyheder/viden/tech/oestre-landsret-stadfaester-dom-mod-csc-hacker>>. <<http://www.ibtimes.co.uk/pirate-bay-founder-gottfrid-svartholm-warg-sentenced-three-half-years-historic-hacker-case-1472538>>. <<https://torrentfreak.com/gottfrid-svartholm-found-guilty-in-hacking-trial-141030/>>; <<https://torrentfreak.com/pirate-bays-gottfrid-svartholm-loses-hacking-appeal-150617/>>.

⁷⁵ Rigsrevisionen, *Beretning til Statsrevisorerne om revisionen af statsregnskabet for 2013*, Oktober 2014, p. 80.



has not performed its duty as controller as stated in the Danish Act on Processing of Personal Data, section 41 (3) on security of processing, which states that

‘The controller shall implement appropriate technical and organizational security measures to protect data against accidental or unlawful destruction, loss or alteration and against unauthorized disclosure, abuse or other processing in violation of the provisions laid down in this Act. The same shall apply to processors’.⁷⁶

The Agency concludes that possibly also the Passport Registry has been hacked in 2012, along with other registries of sensitive personal data. The new biometric requirements have thus entailed a series of new concerns for citizens’ data privacy.

Question 15 – Collection of other types of biometric data and possible objections thereto

- ✓ Beyond fingerprints, are in your country any other types of biometric data required to be included in passports and other travel documents? If so, which types?
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests, and what were their effects?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were the outcomes of these procedures?
- ✓ Do citizens generally experience the inclusion of this additional biometric data in the passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the introduction of these requirements.

⁷⁶ The decision (in Danish) is available at <<http://www.datatilsynet.dk/afgoerelser/seneste-afgoerelser/artikel/vedroerende-uedkommendes-adgang-til-personoplysninger-rigspolitiets-jnr-2013-079-76/>>.

In Danish law, beyond fingerprints, pictures and signatures are the only other type of biometric data required to be included in passports and other travel documents. The digital picture of the passport's holder has been included since 2006.⁷⁷ To the best of our knowledge there were no non-judicial or judicial objections or protests launched against the inclusion of biometric features in passports and travel documents.

PART IV – ACTUAL OR POTENTIAL OBSTACLES FOR EU CITIZENS

Introduction

Here as anywhere else, differences between legal systems of the various Member States can actually or potentially create particular obstacles for static and mobile EU citizens alike. To an extent, these can be of a predominantly practical or technical nature. At the same time, these may flow from policy practices with regard to selective recognition of travel documents, sanctions imposed in case of non-compliance, denial of consular protection, or the treatment of travelling (accompanied or unaccompanied) minors. In addition to varying from country to country, the relevant conditions and procedures may change without prior notice. The following set of questions see to further expose the hindrances EU citizens may be confronted with.

Question 16 – Hindrances for own nationals as regards the venues and costs for obtaining travel documents

- ✓ In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by own nationals with regard to the *accessibility of the venues* where travel documents can be obtained or renewed?
- ✓ Equally, in reference to the answers provided to Questions 5-10 above, are any particular hindrances experienced in your country by own nationals with regard to the *costs* associated with the application for and acquisition of travel documents?

Danish nationals can obtain passports at a large number of venues (every municipality can process the applications and biometric data required, in order to send them to the Police and then the company actually producing the passports). Also Danish nationals living abroad can apply for a biometric passport in any municipality in Denmark, for example in the occasion of a holiday or short trip to the country, and there is no specific

⁷⁷ Preparatory works to Bill L 202 2010-11, *Bemærkninger til lovforslaget* at 1.

residence requirement in a particular municipality. Therefore, apart from the case of the consulate handling issuance and renewal of passports abroad (the number of which is limited, as explained in Question 9), the accessibility of the venues can be considered as being of a good standard.

As regards the costs, the increase for the taking of the biometric data (fingerprints) was set to 27 kr. (3,63 €) in 2012, and the increase of the fee was approved by the Parliament.⁷⁸ The costs were deemed acceptable by the organisations heard at the time of the passing of the bill.⁷⁹

Question 17 – Hindrances for EU citizens as regards the venues and costs for obtaining travel documents

- ✓ What are the three largest groups of non-national EU citizens that annually visit your country (i.e. short-term residents in the sense of Directive 2004/38/EC, stay < 3 months)?
- ✓ What are the three largest groups of non-national EU citizens present in your country for a more extended duration (i.e. long-term residents in the sense of Directive 2004/38/EC, stay > 3 months)?
- ✓ In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by these particular groups of mobile EU citizens with regard to the *accessibility of the venues* where travel documents can be obtained or renewed? (e.g. necessity to travel abroad, due to the unavailability of consular delegations)
- ✓ In reference to the answer provided to Question 8 above, are any particular hindrances experienced in your country by these particular groups of mobile EU citizens with regard to the *timeframe* associated with the application for and acquisition of travel documents for *new-born children*?

(Note that some of the data necessary to provide an answer to this question may be procured from consular authorities of the relevant Member States, from national complaint bodies such as Ombudsmen, or by contacting mobile EU citizens and inquiring if they have personally encountered any such problems.)

⁷⁸ L 202 2012.

⁷⁹ *Kommenteret Høringsoversigt vedrørende Udkast til lov om ændring af lov om pas til danske statsborgere m.v. og udlændingeloven (Fingeraftryk i passet m.v.)* (L 202) 28. April 2011.



According to the Statistics Denmark data analysed by Denmark's national tourist organisation Visit Denmark⁸⁰, the three largest groups of non-national EU citizens⁸¹ that annually visit Denmark are:

1. German nationals (13 million overnight stays in 2014)
2. Swedish nationals (1,9 million overnight stays in 2014)
3. Dutch nationals (0,96 million overnight stays in 2014)

As regards long-term residents, the Immigration Service's annual statistical overview indicates that Romanians, Polish and German nationals are the three largest groups which have obtained EU residence cards in Denmark in 2014.⁸² However, Denmark Statistics reports that the three largest groups of foreign citizens from other Member States living in the country for a longer period are Polish, German, and Swedish nationals.⁸³ Swedish nationals tend perhaps to 'disappear' from e.g. EUROSTAT statistics⁸⁴, as in virtue of the Nordic cooperation they are not required to register for an EU residence card. However, in addition to being one of the largest groups of foreign nationals living in Denmark, they are also the largest group of frontier workers in the Danish labour market.⁸⁵

As regards the experience of Romanians living in Denmark, we can refer to the experience shared with us by a researcher employed at the University of Copenhagen.⁸⁶ From the information made public by the Romanian Embassy in Copenhagen, it is possible to infer that it is a lot faster to obtain a travel document (passport or national ID card) by travelling back to Romania, instead of obtaining it at the embassy. The only place in Denmark where it is possible to apply for a passport is the Copenhagen embassy, and the applicants have to be present personally when submitting the request; delegation is not allowed. This poses a logistical problem for the many Romanians living outside of Copenhagen, e.g. in the Jutland peninsula.

⁸⁰ *Oversigt med overnatninger i 2014*, available at < <http://www.visitdenmark.dk/da/denmark/fakta-og-tal-om-turismen-i-danmark>>.

⁸¹ On the second place Norway is usually listed as 2.5 million Norwegians visit Denmark pr. year.

⁸² Udlændingestyrelsen (2015), *Tal og fakta på udlændingområdet 2014*, p. 49, available at <https://www.nyidanmark.dk/da-dk/Nyheder/Nyheder/udlaendingestyrelsen/2014/tal_og_fakta_2014.htm>.

⁸³ Denmark Statistics (2015), *Befolkningens udvikling 2014 - Vital statistics 2014*, p. 85, available at <www.dst.dk/publ/BefUdvikling>.

⁸⁴ Eurostat Newsrelease 230/2015 – 18 December 2015, Foreign citizens living in the EU Member States, p. 4.

⁸⁵ <<http://www.arbejdslivinorden.org/i-fokus/i-fokus-2012/naer-pendling-blir-ett-hinderlopp/article.2012-04-11.6593514553>>.

⁸⁶ The following sections are a slightly rearranged text. The names of the respondents and original answers to the questions proposed are on file with the author.



The time difference for the issuance of a passport is significant – it might take up to 4 months for a passport to be issued through the Embassy, while it takes only 10 days (the mandatory time limit for issuance) for a passport to be issued at the competent police station in Romania. One of the reasons is that the passport request and documentation is sent to Romania, where the passports are issued, and then “shipped” back to Denmark.

As regards the costs, the Embassy tax for a new passport is DKK 745 (EUR 100), while the local police tax in Romania is RON 292 (EUR 65). Given the fact that an airplane return ticket from Denmark to Romania, if bought well in advance can cost around 45 EUR, the extra 35 EUR to pay in order to get a passport when living abroad can seem as an unreasonable burden.

The only available information on the Romanian Embassy’s website about obtaining a passport for a new-born child is that unless an applicant has a final court decision that entrusts the minor to only one of the parents, both parents have to be present at the embassy to request the passport, or they need to have a power of attorney from the parents who is not present. No other information is posted with respect to the documents needed. One could deduce which documents would be required by looking at the information made available under a different section – the section regarding issue of a passport for Romanian minors under the age of 14, domiciled in Romania. However, the specific information for minors born in Denmark is not at all developed, which in itself can constitute a hindrance.

As regards a German national’s experience with regard to the accessibility of the venues where travel documents can be obtained and renewed, a German scholar at the University of Copenhagen has informed that he had problems in this sense with respect to some foreign representations which have pooled their embassy’s geographic area of competence, thus requiring to apply for a visa only at specific locations, e.g. Berlin. However, this experience does not fall within the scope of the present research. After his immediate arrival in Denmark, he did not need to rely on Danish documentation, so he could not comment on how well that works. He also does not have any personal or mediate experience with the issue of application for and acquisition of travel documents for new-born children.

Moreover, the scholar informs that he uses his German national ID regularly in Denmark and it is invariably accepted without problems. Finally, as regards other *de jure* or *de facto* obstacles as regards the acquisition or use of travel documents, he added that the German authorities used to restrict the issuance of national ID cards to citizens resident in Germany, making it obligatory for non-resident citizens to always carry their passports. But that restriction has been removed a fair number of years back and the embassies now easily issue ID cards and all other documentation. The service seems to



work really quite well; although he has not needed to use their services in Copenhagen as yet.

As regards a Swede's perspective on the accessibility of venues for getting travel documents, we can report the experience of a Swedish researcher at the University of Copenhagen who holds a CPR-number (national ID number) and who is registered in the Danish *folkeregister* as resident in Denmark. She informs that at the same moment a Swedish citizen is registered in Denmark, the Danish authorities communicate this to the Swedish authorities, who in turn, deregister the citizen in Sweden. This entails some administrative hurdles when Swedish nationals have to renew their passports or ID-card, as explored below.

With regard to the *accessibility of the venues* where travel documents can be obtained or renewed, some hindrances have arisen since the Swedish embassy in Copenhagen has stopped providing the service of passport renewal. Swedish citizens have now to travel to Sweden and there contact a Swedish police station in order to get a new passport. Against an administrative fee it is also possible to have the police in Malmö to send the passport to the embassy and thus be able to collect it in Copenhagen.

With regard to the *timeframe* associated with the application for and acquisition of travel documents, the Swedish police informs that it would take longer for them to issue the passport when a citizen is not registered as a resident in Sweden anymore. They would have to verify the information against the information that Danish authorities have.

There are also discrepancies in the travel documents recognised as valid ID in Sweden, as compared to the travel documents that are recognised in Denmark. In Sweden, it is possible to have an ID card, which is issued not on nationality basis, but on residence. The Swedish ID card is recognised as a travel document within Schengen. However, it is not possible for Swedish citizens to get an ID card when they move to Denmark, if they so wished, as their not being resident in Denmark would render them ineligible for a Swedish ID card.

No other *de jure* or *de facto* obstacles as regards the acquisition or use of travel documents could be reported.

Question 18 – Discrepancies in the recognition of travel documents for identification purposes

Background example (fictitious)

Björn is Swedish and holidaying in Slovakia. He took his ID card issued by a bank with him – which in Sweden is accepted as proof of identity.

Björn could get into trouble however if the Slovakian authorities want to check his identity, because the only valid ID documents they recognise are national ID cards and passports issued by the Swedish authorities.

- ✓ Are there discrepancies in the travel documents recognised as valid ID in the home country of the three largest groups of non-national EU citizens that annually visit your country (identified under Question 17), as compared to the travel documents that are recognised in your Member State?⁸⁷
- ✓ Are there discrepancies in the travel documents recognised as valid ID in the home countries of the three largest groups of non-national EU citizens present in your country for an extended duration (identified under Question 17), as compared to the travel documents that are recognised in your Member States?⁸⁸

Although Danish authorities do not issue national identity cards to Danish nationals, identity cards from other Member States are recognised as travel documents in Denmark.⁸⁹

Besides passports, the travel documents recognised as valid ID in the home country of the three largest groups of non-national EU citizens that annually visit Denmark, which are recognised by Danish authorities are:

⁸⁷ For answering this question, reference may be had to the aforementioned PRADO database (<<http://www.prado.consilium.europa.eu/>>).

⁸⁸ Also for answering this question, reference may be had to the aforementioned PRADO database (<<http://www.prado.consilium.europa.eu/>>).

⁸⁹ Aliens Order, section 5. For a full list see the Announcement of Passports and Visa Conditions of the Ministry of Justice, Justitsministeriets kundgørelse om pas- og visumforhold af 17. december 2013 som ændret den 1. maj 2014, available at <https://www.nyidanmark.dk/NR/rdonlyres/444448FA-19E5-4AEC-A91C-80C16F70D977/0/en_kundgoerelse_pas_og_visumforhold_01012014.pdf>. The Ministry of Immigration, Integration and Housing updates the passport and visa promulgation once a year, listing which countries' citizens are exempt from passport and visa requirements, and listing also approved border crossing points. Any update to the passport and visa promulgation is published in the Danish Official Gazette (*Statstidende*).



Germany	<i>Personalausweis, Vorläufiger Personalausweis, Kinderausweis, Reiseausweis als Passersatz</i> (issued by the German border authorities, when an expired nationality passport or Personalausweis is carried along. Persons under 15 years of age can use a <i>Reiseausweis als Passersatz</i> without being in possession at the same time of an expired nationality passport or <i>Personalausweis</i>)
Sweden	<i>Nationellt identitetskort</i>
The Netherlands	<i>Toeristenkaart A and B, Europese identiteitskaart</i>

Travel documents recognised as valid ID in the home countries of the three largest groups of non-national EU citizens present Denmark for an extended duration, which are recognised by Danish authorities (*in lieu* of or beside passports):

Germany	(see above)
Romania	<i>Carte De Identitate</i>
Poland	<i>Dowód Osobisty</i>

As regards Romanian nationals, we were told that this is one convenient aspect about being Romanian – within the EU Romanians can travel with the national ID cards even if they do not have passports, or they can use their passports anyway. The format of the ID card makes it easy to verify, just like a passport. This applies to the entire EU, not just to the Schengen space, plus a series of other countries, including Norway, Switzerland, and Iceland.

Question 19 – Consequences of expiry or loss

- ✓ Does your country allow for EU citizens to enter the territory without being in possession of a valid travel document? If so, under which conditions?
- ✓ Does your country allow for EU citizens to exit the territory without being in possession of a valid travel document? If so, under which conditions?
- ✓ Which sanctions, if any, are applied to *own nationals* that are found to be not in possession of a valid travel document when attempting to enter or exit the country?

Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

- ✓ Which sanctions, if any, are applied to *nationals of other Member States* that are found to be not in possession of a valid travel document when residing in, transiting or travelling across your country?

Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

All foreigners, EU citizens included, who wish to enter the Danish territory must be in possession of a valid travel document, either a passport or another valid identity card.⁹⁰

Finnish and Swedish nationals are allowed to enter and exit Denmark without being in possession of a valid document, if they travel directly from or to another Nordic country.⁹¹

Also exempt from the requirement of holding any form of travel identity document are young travellers (under 18 years of age) who are permanent resident in one of the Nordic countries, when they are travelling in a group directly to or from one of the Nordic countries, and their trip is connected to a school excursion, sport event, or similar event and of no more than one month's duration.⁹²

⁹⁰ Aliens Act, section 39 (1) (*Udlændingeloven*), Aliens Order, section 1(1) (*Udlændingebekendtgørelsen*).

⁹¹ Icelandic and Norwegian nationals are also exempt from the passport requirement, if they enter or travel to Denmark, Iceland, Norway, Finland or Sweden. Aliens Act, section 39 (4), Aliens Order, section 1 (4).

⁹² Announcement of Passports and Visa Conditions of the Ministry of Justice (see footnote 89 above), at I.2.



Another category exempt from the travel identity requirement are foreign nationals who hold either a residence permit, an authorisation to return, or a long-term visa issued by another Schengen State who travel through Denmark without any undue delay (in accordance with Article 5(4)(a) of the Schengen Borders Code).⁹³

Moreover, EU citizens can enter or exit the territory if they are in possession of an EU Emergency Passport (ETD), which can be issued e.g. by the diplomatic representation of their country of origin in Denmark in case of loss or theft of documents.⁹⁴ In case an EU national is not in possession of a valid travel document when entering Denmark, they must be given ‘a fair chance’ to obtain the necessary documents within a reasonable amount of time, or to have confirmed that they are included by the EU rules on free movement.⁹⁵

Danish nationals have to be in possession of a valid passport when they enter or leave the country.⁹⁶

Question 20 – Grant of consular protection to EU citizens not in possession of valid travel documents

- ✓ In practice, is in your country consular protection granted by other countries to mobile EU citizens that are found not to be in possession of valid travel documents?

If available, please include in your answer any figures, statistics and/or salient examples with regard to the occurrence of the grant of consular protection in such cases.

Regrettably we have not been able to find figures or statistics that could provide an adequate answer to this question.

⁹³ Announcement of Passports and Visa Conditions of the Ministry of Justice, at I.3.

⁹⁴ A list of the other categories of travel documents which are exempt from the nationality passport requirement (e.g. laissez-passer, EU national groups of students, seaman’s book, Nato Travel Order etc.) can be found in the Announcement of Passports and Visa Conditions of the Ministry of Justice, at II, no. 1-20.

⁹⁵ Aliens Order, section 11 (9).

⁹⁶ Passport Act, section 2.



Question 21 – Possible documentation-related obstacles suffered in travelling with minors

- ✓ Are the additional documentation requirements (if any) imposed on minors travelling alone, travelling with adults who are not their legal guardian, and/or travelling with only one parent, known to cause substantial hindrances to mobile EU citizens in practice?

As explained under question 11 above, Denmark does not require additional documentation for minors travelling alone, travelling with adults who are not their legal guardian, and/or travelling with only one parent. Therefore in this respect there are not substantial hindrances to mobile EU citizens in practice when entering Denmark.

PART V – ACTUAL OR POTENTIAL OBSTACLES FOR TCN FAMILY MEMBERS

Introduction

Not only EU citizens, but also their TCN family members may experience difficulties in their access to and use of travel documents, either de jure or de facto; those difficulties may moreover be condoned by EU law, or expressly condemned as incompatible with the rules applicable to the relevant situation. A distinction can be drawn between cases in which TCN family members carry the (optional) EU residence card with them when travelling (alone or together), or when they are doing so while not in possession of that document; the legal consequences vary, depending on the scenario at hand.

Question 22 – Possible documentation-related obstacles suffered by TCN family members with residence cards

Background example (fictitious)

Wen-ling, the Chinese spouse of a Dutch national living in Finland, has been issued an EU family member's residence card in Finland. Wen-ling and her husband wish to travel to Romania. As long as she is in possession of a valid passport and an EU family member's residence card, the latter country does not require her to have obtained of an entry visa. However, if she were to travel alone, she is required to have acquired such a document beforehand.

- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country and in possession of a family member's residence card?
- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country and in possession of a family member's residence card, issued by the Member State where the family member is living with the EU national?
- ✓ Does your country require the possession of a family member residence card for third country national family members of EU nationals of another Member State travelling alone on domestic flights?



To enter Denmark without having their passport (or other valid travel document) endorsed with an entry visa in advance, a foreign national/third country national family member must be the holder of a EU residence card issued according to the provisions of Directive 2004/38/EC or otherwise according to the rules of free movement.⁹⁷

To the best of our knowledge, the foreign national holder of a valid EU residence card can enter Denmark when travelling with their family members, when travelling alone, and when travelling alone on domestic flights.

Question 23 – Possible documentation-related obstacles suffered by TCN family members without residence cards

- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country, and not in possession of a family member's residence card?
- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country, and not in possession of a family member's residence card?

Third country nationals who are family members of EU nationals can enter Denmark without being required a visa if they are the holders of certain types of residence permits. The Danish Immigration Service provides as a list of the residence permits that allows entering Denmark by referring to Annex 2 to the EU Visa Code Handbook.⁹⁸

The Aliens Act states that third country nationals who are under EU rules, e.g. because they are family members to an EU citizens, can enter and stay in Denmark for the same amount of time as EU citizens.⁹⁹ However, third country nationals have to get a visa before they enter Denmark, unless the person concerned is not required a visa.¹⁰⁰

⁹⁷ Announcement of Passports and Visa Conditions of the Ministry of Justice, at IV (6), Aliens Order section 11 (11).

⁹⁸ The documents are available on the Danish Immigration Service Website at <http://www.nyidanmark.dk/da-dk/Lovstof/schengen_indrejse/visa_code_handbook_visumhaandbogen.htm>.

⁹⁹ Aliens Act, section 2 (2).

¹⁰⁰ Aliens Act, section 39 (2). Citizens of certain countries do not require a visa to enter Denmark.

This means that if they are not in possession of a residence permit or EU residence card, third country national family members are required an entry visa, both when they are travelling together with their family, or alone to Denmark. If a foreigner indicates that he/she is a family member to an EU citizen, but if he/she is not in possession of a valid travel document when entering Denmark, they must be given ‘a fair chance’ to obtain the necessary documents within a reasonable amount of time, or to have confirmed that they are included by the EU rules on free movement.¹⁰¹

A foreign national who holds a residence permit or re-entry visa permit issued by another Schengen country, or who is in possession of a long-term visa limited to another Schengen country can travel through Denmark (without unfounded delay) without a passport or other travel document, as stated by the Schengen Borders Code Article 5, paragraph 4, litra (a).¹⁰²

PART VI – ANY OTHER OBSTACLES

Question 24 – Other obstacles

- ✓ Are there any other *de jure* or *de facto* obstacles in your country as regards the acquisition or use of travel documents not addressed in your responses to the previous questions?

(Again, the most interesting data for answering this final ‘catch-all’ question may perhaps be gleaned from diplomatic offices of other Member States in your country (or national complaint bodies such as Ombudsmen), or by contacting a selection of EU citizens to learn which specific other problems they have encountered.)

Apart from the issues examined above it has not been possible to identify any other *de jure* or *de facto* obstacles as regards the acquisition or use of travel documents in Denmark.

¹⁰¹ Aliens Order, section 11 (10).

¹⁰² Aliens Consolidation Act, section 2b (4), Aliens Order, section 39 (3).



ANNEX

List of national provisions

- Passport Act, LBK no. 900 of 08.09.2008, *Bekendtgørelse af lov om pas til danske statsborgere m.v. (pasloven)*, last amended by Act no 176 of 24.02.2015, *Lov om ændring af lov om pas til danske statsborgere m.v., udlændingeloven og retsplejeloven (Styrket indsats mod rekruttering til væbnede konflikter i udlandet m.v.)*
- Passport Executive Order, BEK no. 1337 of 28.11.2013, *Bekendtgørelse om pas m.v.*
- Aliens Consolidation Act, LBK no. 1021 of 19.09.2014, *Lovbekendtgørelse af Udlændingelov*
- Visa Executive Order, BEK no. 376 of 20.03.2015, *Bekendtgørelse om udlændinges adgang til Danmark på grundlag af visum*
- Aliens Order, BEK no. 375 of 20.03.2015, *Bekendtgørelse om udlændinges adgang her til landet*
- EU Residence Executive Order, BEK no. 474 of 12.05.2011, *Bekendtgørelse om ophold i Danmark for udlændinge, der er omfattet af Den Europæiske Unions regler (EU-opholdsbekendtgørelsen)*
- Announcement of Passports and Visa Conditions of the Ministry of Justice, *Justitsministeriets kundgørelse om pas- og visumforhold af 17. december 2013 som ændret den 1. maj 2014*

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**WP 7 CIVIL RIGHTS
CASE-STUDY 7.6
ACCESS TO TRAVEL DOCUMENTS**



Report on The Netherlands

UTRECHT UNIVERSITY

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WITH THE ASSISTANCE OF MAX VAN DRUNEN

PART I – TYPOLOGY AND FORMAT

Introduction

In order to assess the state of play with regard to potential obstacles in the access to and usage of travel documents, a logical first point of departure is to inquire which types are generally made available in the respective Member States, and whether those documents that fall within the ambit of Regulation 2252/2004/EC comply with the designated format there prescribed.¹

Question 1 – Typology

Which are the main types of travel documents that are in common usage in your country?

Article 2(1) of the Passport Act (*Paspoortwet*) provides for a list of travel documents issued by the Kingdom of the Netherlands.² Accordingly, a national passport (*nationaal paspoort*) is the travel document most common in usage. Instead of the national passport, one can also obtain a business passport (*zakenpaspoort*): a regular national passport having twice the amount of pages available for stamps and visa.³ Moreover, a diplomatic passport (*diplomatiek paspoort*) and a service passport (*dienstpaspoort*), are travel documents available to nationals who travel abroad in service of the Netherlands. A travel document for refugees (*reisdocument voor vluchtelingen*) is available to those who have the official status of refugee, while a travel document for aliens (*reisdocument voor vreemdelingen*) is available to those who are either stateless or cannot obtain a travel document in their state of origin.⁴ Moreover, emergency documents (*nooddocument*) and other documents to be determined by the Minister of the Interior and Kingdom Relations constitute travel documents.⁵

¹ A commonplace assumption in EU law is that Regulations are applied uniformly, due to their direct applicability; this is however a matter that remains in need of empiric verification, since any actually present deviations might lead to hindrances that will still need to be addressed and eradicated.

² See < http://wetten.overheid.nl/BWBR0005212/geldigheidsdatum_05-02-2016 > accessed 5 February 2016.

³ See e.g. Article 3(1)(a) Implementing Regulation on Passports in the Netherlands 2001. As this travel document is not significantly different from the regular national passport, it will not be discussed further throughout this questionnaire.

⁴ Article 2(1)(a-e) of the Passport Act.

⁵ Article 2(1)(f-g) of the Passport Act.

In the Netherlands, secondary legislation further regulates specific particularities regarding travel documents.⁶ For instance, according to Article 3(2) of the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*), examples of the abovementioned emergency documents are an emergency passport (*noodpaspoort*) and a laissez-passer document.⁷ Under exceptional circumstances, the former document is made available to nationals are not able to reach their travel documents in due time, while their travels plans cannot be delayed for compelling reasons. The latter document is made available with the sole purpose of allowing aliens to leave the territory, and can therefore only be used once. Examples of documents to be determined by the Minister are a facilities passport (*faciliteitenpaspoort*) and a second passport.⁸ The former document was historically created to accommodate the peculiar position of the people from the Moluccan within the Netherlands. While it still exists, it is not common in usage.

Notably, the identity card is not listed as a travel document. However, Article 2(2) of the Passport Act holds that, unless stated otherwise, the provisions of that Act are equally applicable to the Dutch identity card (*Nederlandse identiteitskaart*).

With the exception of the facilities passport, all of the travel documents mentioned above can be found in the PRADO database.⁹

⁶ See, also the other implementing regulations: Implementation Regulation on Passports Foreign Countries (*Paspoortuitvoeringsregeling Buitenland 2001*); Implementation Regulation on Passports Caribbean Countries (*Paspoortuitvoeringsregeling Caribische landen*); and Implementation Regulation on Passports Royal Military Police (*Paspoortuitvoeringsregeling Koninklijke Marechaussee 2001*).

⁷ See < http://wetten.overheid.nl/BWBR0012811/geldigheidsdatum_05-02-2016 > accessed 5 February 2016.

⁸ Article 2 of the Implementing Regulation on Passports in the Netherlands 2001.

⁹ Please note that the travel document for refugees (*reisdocument voor vluchtelingen*) is listed as “travel document (Convention of 28 July 1951)”.

Question 2 – Domestic follow-up rules to the main EU instrument

Were any specific measures enacted in your country to give further effect to the main EU instrument regulating travel documents, i.e. Regulation 2552/2004/EC? If so, please identify the relevant act(s)/law(s) and describe their location within the domestic legal hierarchy.

Initially, in 2006, the Netherlands amended the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*), the Implementation Regulation on Passports Foreign Countries (*Paspoortuitvoeringsregeling Buitenland 2001*), the Implementation Regulation on Passports Caribbean Countries (*Paspoortuitvoeringsregeling Caribische landen*), and the Implementation Regulation on Passports Royal Military Police (*Paspoortuitvoeringsregeling Koninklijke Marechaussee 2001*), in order to give effect to Regulation 2252/2004, i.e., in order to introduce the electronic chip by 26 August 2006. The amendment introduced a so-called “fotomatrix”, a document describing the requirements for valid photographs of the passport holder’s face (in order for the photographs to be scanned and stored for facial recognition).¹⁰ At a later date, in 2009, the Implementing Regulations were amended again with particular regard to the taking and registration of fingerprints.¹¹

The Passport Act (*Paspoortwet*) was amended in 2009 in order to give further effect to Reg. 2252/2004, particularly on the issue of registration and verification of fingerprints in the travel documents registration system. As part of the legislative amendment of 2009, the Dutch legislator added a requirement of the taking of two additional fingerprints, apart from the two fingerprints required by Reg. 2252/2004. The four fingerprints would be kept in a central travel document data registration system for

¹⁰ Wijziging Paspoortuitvoeringsregeling Nederland 2001, Paspoortuitvoeringsregeling Buitenland 2001 en Paspoortuitvoeringsregeling Koninklijke Marechaussee 2001 (invoering elektronische reisdocumenten), Staatscourant 17 July 2006, nr. 136/p. 16, available at <https://zoek.officielebekendmakingen.nl/stcrt-2006-136-p16-SC75910.html> ; Wijziging Paspoortuitvoeringsregeling Nederlandse Antillen en Aruba 2001 (invoering elektronische reisdocumenten), Staatscourant 17 July 2006, nr. 136/p. 12, available at: <https://zoek.officielebekendmakingen.nl/stcrt-2006-136-p12-SC75912.html> ;

¹¹ Wijziging Paspoortuitvoeringsregeling Nederland 2001, Paspoortuitvoeringsregeling Buitenland 2001 en Paspoortuitvoeringsregeling Koninklijke Marechaussee 2001 (opneming vingerafdrukken) <https://zoek.officielebekendmakingen.nl/stcrt-2009-9481.html#d537e316> ;

eleven years.¹² However, this led to several protests (*see infra under Question 12*), and in December 2013, the Passport Act was amended in order to abandon the extra two fingerprints, and to shorten the period for storage of the fingerprints until the moment of delivery of the travel document to the holder.¹³

The Passport Act is a so-called *Rijkswet* as meant in Art. 3 Statute of the Kingdom of the Netherlands. A *Rijkswet* is an autonomous legal act, applicable throughout the entire territory of the Kingdom.

The Implementing Regulations are ministerial regulations [*ministeriele regeling*], which are binding measures of general application. The Implementing Regulations are all based upon the Passport Act.

Question 3 – Conformity with applicable standards and requirements

Please verify whether the standards and requirements for (issuing) passports and travel documents adhered to in your country comply with those prescribed in Regulation 2552/2004/EC, including the requirements and pointers contained in its Annex.

In particular:

Do the standards and requirements imposed refer to the mandatory inclusion of fingerprints in an interoperable format?

Art. 3(2) Passport Act provides that a travel document must carry a facial image, two fingerprints and the signature of the passport holder. The text of Art. 3(2) thus does not explicitly refer to the interoperable format of the fingerprints.¹⁴

Art. 28a of the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*), which provides additional instructions for the taking of fingerprints, neither refers to the interoperable format.

¹² See the Explanatory Memorandum for the amendment of the Passport Act, Tweede Kamer 2007/2008, 31324, nr. 3, available at: <https://zoek.officielebekendmakingen.nl/kst-31324-3.html> and the final amendment act: Rijkswet van 11 juni 2009 tot wijziging van de Paspoortwet in verband met het herinrichten van de reisdocumentenadministratie, Staatsblad 2009, nr. 252, available at <https://zoek.officielebekendmakingen.nl/stb-2009-252.html>. See also the letter of the Minister of 18 April 2005 about the way in which Regulation 2252/2004/EC was to be implemented: Tweede Kamer 2004/2005, 25 764, nr. 26, available at <https://zoek.officielebekendmakingen.nl/kst-25764-26.html>

¹³ TK 2012-2013, 33440, nr. 3, Memorie van Toelichting, available at : <https://zoek.officielebekendmakingen.nl/kst-33440-3.html>

¹⁴ Art. 3(2) Paspoortwet: [*Een reisdocument is voorzien van de gezichtsopname, twee vingerafdrukken en de handtekening van de houder volgens nader bij regeling van Onze Minister te stellen regels.(...)*]

The Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*) and the brochures “Features of Dutch Passports and Dutch Identity Cards” that are published regularly by the Governmental Service Desk Personal Data [Rijksdienst voor Identiteitsgegevens] contain most, but not all technical standards and safety features that are set out in the Annex to Reg. 2252/2004.

The researcher was, for instance, unable to obtain information whether the paper used does or does not contain “optical brighteners” or “security reagents to guard against attempts at tampering by chemical erasure”, nor whether “security thread” was used, as set out under point 1 ‘Material’ of the Annex. However, the other minimum requirements are met, as are the security and anti-copying measures.¹⁵

Art. 3(5) and (6) of the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*) provide that certain types of travel documents (excluded are the emergency passport and the laissez-passer) issued in the Netherlands must contain a machine-readable biographical data page as required by point 2 of the Annex. Furthermore, as is clear from the Brochure on the Features of Dutch Passports and Dutch Identity Cards, the printing techniques used for the facial image in these travel documents, the graphical lay-out, and the fact that the other pages of the passport do not contain any personal data, comply with the requirements of point 2 of the Annex.

The research was unable to verify whether all printing techniques as mentioned under point 3 of the Annex are used, such as the use of reagent inks, but there is a so-called Kinegram, which has rainbow-colouring, UV fluorescent patterns and fibres, and patterns in microprint. Furthermore, the pages of passports are numbered in accordance with point 3(C) of the Annex, namely by laser engraving on the synthetic biographical data page, and by conical laser perforation of every paper page.

The measures against copying under point 4 of the Annex are hard to check in detail, since the researcher is unfamiliar with all the techniques used, but the tactile relief, the Kinegram, and the Tilted Laser Image seem to comply with the pointer in the Annex. Finally, the issuing technique used for Dutch travel documents seem to comply with the requirements as set out in point 5 of the Annex, since a so-called Stereo Laser Image is used for the facial image.

¹⁵ See the brochure on Features of Dutch Passports and Dutch Identity cards 2014: <http://www.rvig.nl/documenten/brochures/2015/02/27/features-of-dutch-passports-and-dutch-identity-card-2014>



It may therefore be concluded that Dutch travel documents (largely) comply with the requirements and pointers as set out in the Annex to Reg. 2252/2004.

Did your Member State designate a specific body for printing passports and travel documents? Please check whether that name was subsequently communicated to the Commission, and also indicate if the same body was designated by another Member State.

The undertaking called Morpho is tasked to print the passports and other travel documents of The Netherlands. Morpho is part of the French corporation Safran Group S.A. Apparently, the Morpho production facility in Haarlem, the Netherlands, also produces travel documents for Finland, Sweden and Slovakia.¹⁶

The researcher was unable to check whether Morpho has been officially communicated to the Commission.

Have the technical specifications referred to in Article 2 of the Regulation been published, or are they (in line with Article 3) kept confidential?

Although the Dutch authorities do publish the aforementioned brochure on the features models of the travel documents,¹⁷ it is unlikely that these constitute the technical specifications as referred to in Art. 2 of the Regulation. The technical specifications are assumed to be kept confidential, but the researcher was unable to obtain further information from the authorities.

Have the biometric features prescribed by the Regulation been integrally introduced for the passports and travel documents issued in your country?

Yes, the requirements have been integrally introduced for all Dutch travel documents with a validity of more than 12 months, as follows from the amendment of the Implementing Regulations in 2006.¹⁸ Initially, the Dutch authorities went even so far as to introduce the registration of biometric features and fingerprints also for the national identity card, which led to several lawsuits of individuals against the government, culminating in the referral of preliminary questions to the CJEU, and the subsequent

¹⁶ <http://www.morpho.com/en/country/morpho-netherlands#sthash.Ecl20Qt8>

¹⁷ <http://www.rvig.nl/documenten/brochures/2015/02/27/features-of-dutch-passports-and-dutch-identity-card-2014>

¹⁸ Wijziging Paspoortuitvoeringsregeling Nederland 2001, Paspoortuitvoeringsregeling Buitenland 2001 en Paspoortuitvoeringsregeling Koninklijke Marechaussee 2001 (invoering elektronische reisdocumenten), Staatscourant 17 July 2006, nr. 136/p. 16, available at <https://zoek.officielebekendmakingen.nl/stcrt-2006-136-p16-SC75910.html> ; Wijziging Paspoortuitvoeringsregeling Nederlandse Antillen en Aruba 2001 (invoering elektronische reisdocumenten), Staatscourant 17 July 2006, nr. 136/p. 12, available at: <https://zoek.officielebekendmakingen.nl/stcrt-2006-136-p12-SC75912.html>

amendment of the Passport Act in order to remove the obligation of fingerprints for national identity cards.¹⁹

Question 4 – Validity

What is the general period of validity of (the different types of) travel documents that are in common usage in your country?

Article 2(3) of the Passport Act holds that the general period of validity of the travel documents shall be determined by the Minister of the Interior and Kingdom Relations.

According to Articles 10(1) and 10(2) of the Implementing Regulation on Passports in the Netherlands 2001 (hereafter: the Implementing Regulation), the national passport (*nationaal paspoort*) is valid for a period of ten years, unless the applicant has not yet reached the age of eighteen when the request is made, in which case the general period of validity is five years. According to Article 10(3) of the Implementing Regulation, the Dutch identity card (*Nederlandse identiteitskaart*) is also valid for a period of ten years, unless the applicant has not yet reached the age of eighteen when the request is made, in which case the general period of validity is five years.

According to Article 16 of the Implementing Regulation, the travel document for refugees (*reisdocument voor vluchtelingen*) and the travel document for aliens (*reisdocument voor vreemdelingen*) are valid for a period of five years.

According to Article 18(1) of the Implementing Regulation, the facilities passport (*faciliteitenpaspoort*) is valid for a period of ten years, unless the applicant has not yet reached the age of eighteen when the request is made, in which case the general period of validity is five years. Article 20(1) of the Implementing Regulation holds that the general period of validity for a second passport is two years.

According to Article 27(1) of the Implementing Regulation on Passports Foreign Countries 2001 (*Paspoortuitvoeringsregeling Buitenland 2001*), emergency documents are valid for a maximum period of one year.²⁰

According to Article 31(2) of the Implementing Regulation on Passports Foreign Countries 2001, the period of validity of the service passport (*dienstpaspoort*) and the diplomatic passport (*diplomatiek paspoort*) is determined in each separate instance by

¹⁹ TK 2012-2013, 33440, nr. 3, Memorie van Toelichting, available at : <https://zoek.officielebekendmakingen.nl/kst-33440-3.html>

²⁰ See < http://wetten.overheid.nl/BWBR0012810/geldigheidsdatum_08-02-2016 > accessed 8 February 2016.



the Minister of External Affairs. For these types of travel documents the maximum period of validity is ten years, unless the applicant has not yet reached the age of eighteen when the request is made, in which case the maximum period of validity is five years.

With the exception of the identity card and the emergency documents, the travel documents discussed above require inclusion of the applicant's fingerprint. Should circumstances dictate that it is impossible to obtain these fingerprints at the time the request for the travel document is made, the maximum period of validity is reduced to one year.²¹

Is prior (individual) warning issued to the bearer with regard to imminent expiry, and the need to renew the document(s) in question (e.g. via letter or e-mail notice)?

In the Netherlands, the law does not require any prior (individual) warning with regard to imminent expiry or the need to renew the travel document in question. The expiration date is stated on the travel document, and it is the responsibility of its bearer to renew the document before that time. However, in practice many Dutch municipalities do issue such warnings to their citizens by letter, or even by e-mail.

²¹ Cf. Articles 10(2), 16(8), 18(2) & 20(2) of the Implementing Regulation on Passports in the Netherlands 2001; and Article 31(2) of the Implementing Regulation on Passports Foreign Countries 2001.

PART II – ACQUISITION, RENEWAL AND LOSS

Introduction

Next, we take interest in collecting information with regard to the acquisition process, on where and how the documents are to be procured, and at what price. Equally worthy of note will be any possible deviations applied in the situation of renewal or loss, including withdrawal, since these might prove more protracted, costly, or otherwise pose hindrances. We first focus on the situation for own nationals and then consider the situation for resident EU citizens.

Question 5 – Venue, costs and timeframe

At which office in your country are travel documents ordinarily to be obtained? Please include in your answer details on whether or not an application can be made digitally (even when the documents still have to be picked up in person).

According to Article 26(1)(a) of the Implementing Regulation on Passports in the Netherlands 2001, the mayor of the municipality is the competent authority to receive a request for a national passport (*nationaal paspoort*), a travel document for refugees (*reisdocument voor vluchtelingen*) or a travel document for aliens (*reisdocument voor vreemdelingen*), within the European part of the Netherlands. According to Article 26(4) of the Implementing Regulation, the mayor of the municipality is also competent to receive a request for a Dutch identity card (*Nederlandse identiteitskaart*). These are the travel documents most common in usage.

Accordingly, in case the applicant is registered in the basic administration for persons (*basisadministratie personen, BRP*), these travel documents are to be obtained at the Civil Affairs Desk (*Loket Burgerzaken*) of the municipality in which he or she lives. For those cases in which the applicant has not (yet) been registered in the BRP, secondary legislation appoints the mayors of specific municipalities to be the competent authority.

Moreover, according to Article 26(2) of the Implementing Regulation, the Minister of Foreign Affairs is the competent authority to receive requests for a diplomatic passport (*diplomatiek paspoort*) or a service passport (*dienstpaspoort*). Article 26(3) of the Implementing Regulation holds that a request for an emergency document (*nooddocument*) is to be received by the Minister of the Interior and Kingdom Relations, or one of the authorities appointed by him.

Article 28(3) of the Passport Act holds that the applicant, when requesting a travel document, must appear in person before the competent authority, unless for compelling reasons, this cannot be demanded from the applicant. Such exception can only be made if the competent authority is convinced that certainty can be achieved with regard to the identity, nationality and residency status of the applicant. Applications cannot be made digitally.

Which costs are associated with the acquisition of the different types of travel documents issued in your country? Please distinguish between the various categories, where appropriate, and convert any sums in other currencies, where applicable, to EUR.

In the Netherlands, the costs associated with the acquisition of the different types of travel documents are mostly provided for in the Decision passport fees (*Besluit paspoortgelden*).²²

For the year 2016, the costs associated with the acquisition of the national passport (*nationaal paspoort*) and the facilities passport (*faciliteitenpaspoort*) are € 51,20 for applicants below the age of 18 and € 64,44 for all other applicants. The costs of the travel document for refugees (*reisdocument voor vluchtelingen*) and the travel document for aliens (*reisdocument voor vreemdelingen*) are € 51,20 regardless of the applicants' age. The costs associated with the acquisition of the Dutch identity card (*Nederlandse identiteitskaart*) are € 28,48 for applicants below the age of 18 and € 50,40 for all other applicants. The costs of the emergency passport (*noodpaspoort*) and the laissez-passer are € 46,61.

What is the standard timeframe for delivery (i.e. between formal application and actual obtaining of the document in question)? Please also indicate if special limitations apply in case of urgency, and what additional costs (if any) are incurred in such cases.

Article 41(1) of the Passport Act holds that the competent authority should decide on the application for a travel document as soon as possible, yet no later than four weeks after the application has been made. According to Article 41(2) of the Passport Act, the aforementioned period can under special circumstances be extended with another four weeks.

Article 42(2) of the Passport Act holds that, in the Netherlands, the delivery (*uitreiking*) of the travel document takes place no later than two weeks after the competent authority has decided to provide (*verstrekken*) it to the applicant.

²² See < http://wetten.overheid.nl/BWBR0005264/geldigheidsdatum_12-02-2016 > accessed 12 February 2016.

According to Article 37(1) of the Implementing Regulation on Passports in the Netherlands 2001, the applicant can request the competent authority for an urgency delivery. Article 37(3) holds that, in principle, the travel document will be delivered the next day.

In addition to the associated costs mentioned above, a surcharge of €47,31 is applicable for all urgency applications, regardless of the type of travel document.

Question 6 – Deviations in case of renewal or loss

Does a different procedure apply in case of an application for renewal of an earlier document, rather than a first-time acquisition? If so, please highlight the specific deviations, and also indicate whether a reduced tariff is applicable in such cases.

In the Netherlands, the same procedure is applicable to both situations, as actual renewal of an earlier document is not possible. Once (or rather: before) a travel document has expired, a new travel document must be applied for. However, there are slight differences between a first-time acquisition and a repeated acquisition.

It should be noted that the determination of the applicant's identity is an important element of the procedure. To that extent, according to Article 22(1) of the Implementing Regulation on Passports in the Netherlands 2001, the acquisition of a new travel document requires the applicant to provide a travel document of the Netherlands in order to obtain certainty regarding his or her identity. Obviously, this is not possible in case of a first-time acquisition. Therefore, Article 22(5) of the Implementing Regulation holds that an applicant who has never obtained a Dutch travel document can suffice with other (foreign) identity documents, provided that these include the applicant's photograph and signature.

The various tariffs discussed under the previous question are also applicable in such cases, as no reduced tariffs are applicable.

Does a different procedure apply in case of an application due to loss of a previous document, rather than a first-time acquisition? If so, please highlight the specific deviations, and indicate whether a surcharge imposed for such cases.

According to Article 32 of the Passport Act, the applicant is required to hand over any previous travel document to the competent authority upon delivery of the newly requested one. However, should the previous travel document be lost, Article 31 of the Passport Act provides for an exception to that rule.

First, Article 31(1) of the Passport Act holds that the applicant, who has lost a previous travel document, must submit a written statement regarding the loss when applying for a new one.

Furthermore, Article 31(2) of the Passport Act holds that, should the application take place in the Netherlands, the applicant must also submit a copy of the official police report (*process-verbaal*) regarding the loss. Accordingly, before applying for a new travel document, the applicant must notify the loss of the previous document to the police. To this extent, it should be noted that some municipalities are currently experimenting with a procedure that does not require the applicant to obtain an official police report in case of a lost travel document.²³

The various tariffs discussed under the previous question are also applicable in such cases, as no surcharges are applicable.

Question 7 – Grounds for withdrawal

On which grounds are public authorities in your Member States entitled to withdraw a person's passport?

In the Netherlands, distinction is made between a withdrawal (*inhouding*) and a declaration of expiration (*vervalvenverklaring*) of a travel document. According to Article 1(h) of the Passport Act, withdrawal (*inhouding*) means that the travel document is factually taken away from the person to whom it is registered. According to Article 1(g) of the Passport Act, a declaration of expiration (*vervalvenverklaring*) means that the travel document is declared invalid. The grounds for both actions will be discussed below. Afterwards, the procedure applicable to the withdrawal and declaring of expiration will be explained.

Grounds

According to Article 54(1) of the Passport Act, there are five grounds on which a travel document can be withdrawn (*inhouding*). First, a travel document is withdrawn when it is expired by law (*van rechtswege vervallen*). Second, a travel document is withdrawn in case it is damaged to such an extent that the security characteristics have been compromised, the information is no longer readable or is partly missing. Third, a travel document is withdrawn when it has been illegally altered. Fourth, a travel document is withdrawn in case the photograph no longer provides sufficient resemblance with the holder of the document. Fifth, the travel document is withdrawn in case it turns out it contains incorrect information.

²³ See < <https://www.rijksoverheid.nl/onderwerpen/paspoort-en-identiteitskaart/vraag-en-antwoord/wat-moet-ik-doen-als-ik-mijn-paspoort-of-identiteitskaart-kwijt-ben> > accessed 14 February 2016.

Most relevant, according to Article 55 of the Passport Act, the authorities competent to withdraw a travel document are, in the first place, those authorities competent to receive the applications for travel documents and, in the second place, the authorities charged with border protection, the police and the civil servants charged with the supervision of aliens. Additionally, according to Article 52 of the Passport Act, the Public Prosecutor's Office (*Openbaar Ministerie*) and a delegated judge (*rechter-commissaris*) are allowed to withdraw a travel document, but only after they have requested for its declaration of expiration in accordance with Article 25(1) of the Passport Act.²⁴

Additionally, there are various grounds on which a declaration of expiration (*vervallenverklaring*) of travel documents can be requested by specific public authorities.²⁵

According to Article 18 of the Passport Act, the Public Prosecutor's Office (*Openbaar Ministerie*) can request a declaration of expiration (*vervallenverklaring*) of a person's passport, if there are compelling reasons to believe that said person will attempt to avoid the execution of a sanction by traveling abroad. There are three situations in which this measure can be relied upon. First, in case that person is suspected of a crime for which temporary custody (*voorlopige hechtenis*) is allowed. Second, in case that person is sentenced to imprisonment for at least four months or a fine of at least €4.100. Third, in case that person violates the conditions to probation.

According to Article 19 of the Passport Act, a delegated judge (*rechter-commissaris*) can request the declaration of expiration of a person's passport in two scenarios. Such possibility exists, first, when the person concerned is personally facing bankruptcy and, second, when the person concerned is facing judicial obligations conform Article 106 of the Bankruptcy Act (*Faillissementswet*) in connection to the bankruptcy of a legal person in which he or she acted as the (executive) director or commissioner.²⁶

Article 20 of the Passport Act holds that a declaration of expiration can also be requested by the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*) in case there are compelling reasons to believe that the person concerned will attempt to evade his (alternative) military service obligations by residing outside the territory of the Netherlands.²⁷

²⁴ See under 'Procedure' below.

²⁵ Please note: some of these provisions are equally applicable to the other countries that are part of the overarching Kingdom of the Netherlands: Aruba, Curacao and Saint-Martin. That is why some of the phrasing might appear confusing at first sight. If necessary, footnotes are used to clarify the provisions.

²⁶ See < http://wetten.overheid.nl/BWBR0001860/2016-01-01#Titeldeel_AfdelingVierde_Artikel106 > accessed 7 March 2016.

²⁷ Although it is not likely that this information will be of relevance to this questionnaire, it should be noted that such request can also be issued by the Ministers counterpart in Aruba, Curacao or Saint Martin if the situation concerns him.

According to Article 21 of the Passport Act, the same is possible in case there are compelling reasons to believe that the person concerned, who under extraordinary circumstances has been prohibited by law or national ordinance (*landsverordening*) to leave the territory of the Kingdom of the Netherlands, is likely to violate that prohibition.

Furthermore, according to Article 22 of the Passport Act, the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*), the Municipal Executive (*het college van burgemeester en wethouders*), the Provincial Executive (*de Gedeputeerde Staten*) or any other administrative body governed by public law that is competent to recover monies, can request a declaration of expiration in case there are compelling reasons to believe that the person concerned will evade all possible legal measures for the recovery of debts he owes by residing outside of the territory of the Kingdom of the Netherlands, in any of the following situations.²⁸ First, this request is possible in case the person concerned is negligent in fulfilling his obligations to pay taxes or the premiums on social insurance. Second, in case the person concerned is negligent in fulfilling his obligations to repay any loans, subsidies or interest-free deposits granted by the government. Third, in case the person concerned is negligent in fulfilling his obligation to pay any benefits recoverable from him according to law or judicial decision, any other recoverable costs incurred by the government, or any other prefunded or otherwise granted monies. Fourth, in case the person concerned is negligent in fulfilling any maintenance obligations resting upon him, either by law or by judicial decision.

According to Article 23 of the Passport Act, the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*) can request a declaration of expiration in case there are compelling reasons to believe that the person concerned, while staying outside of the territory of the Kingdom, would commit acts resulting in a threat to the security or other important interests of any of the countries of the Kingdom, or the security of any of the befriended powers (*bevriende mogendheden*).²⁹

According to Article 23a of the Passport Act, the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*) can request a declaration of expiration in case there are, based on the information provided by the relevant competent authorities of one of the countries of the Kingdom or a befriended power (*bevriende mogendheid*), compelling reasons to believe that the person concerned will, in said country, evade criminal prosecution or enforcement of

²⁸ The comments of note 28 above are equally applicable here. Additionally, the request described under this article can also be issued by the Governing Council (*bestuurscollege*) of the so-called public bodies (*openbare lichamen*): Bonaire, Sint Eustatius, and Saba,

²⁹ The comments of note 28 above are equally applicable here.

any sanction relating to an act, punishable with custodial sentence of at least one year by the law of a country of the Kingdom.³⁰

Lastly, Article 24 of the Passport Act holds the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*) or any other concerned authority that is charged with the executing the Passport Act, can request the declaration of expiration in two scenarios.³¹ First, in case there are compelling reasons to believe that the person concerned will commit an act resulting in a crime (*misdrif*) in accordance with the law of any of the countries of the Kingdom of the Netherlands, for which sanctioning is demanded by a Treaty binding upon the Kingdom, whilst that person has been sentenced for (complicity to) such an act during the past ten years. Second, in case there are compelling reasons to believe that the person concerned will be, or has been, tampering with the integrity of a travel document. The latter possibility also applies in case the person concerned has intentionally aided another person in doing so.

Procedure

In accordance with Article 25(1) of the Passport Act, the authorities competent to request the declaration of invalidity of a travel document as discussed above, send their request and the ground on which it is based to the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*). Article 25(2) of the Passport Acts holds that, should in the meantime that ground no longer apply, the competent authority must notify the Minister as soon as possible.

According to Article 25(3) of the Passport Act, in case the request is in compliance with the conditions set out in Articles 18 to 24 of the Passport Act, the Minister of Interior and Kingdom Relations lays down a register containing all relevant details relating to the person concerned and the travel document.³²

In accordance with Article 25(4) of the Passport Act, the Minister of Interior and Kingdom Relations informs the authorities competent to do so, that the travel document of a person concerned shall be withdrawn.

According to Article 53(1) of the Passport Act, a travel document that can be declared expired, shall be withdrawn by the authority competent to do so, upon being informed by the Minister in accordance with Article 25(4) of the Passport Act. In case the authority that has withdrawn the travel document is not competent to declare it invalid, the travel document shall be send to the authority that is. The person concerned shall be notified if this is the case.

In accordance with Article 44(1) of the Passport Act, the authorities competent to declare a travel document invalid, are those authorities competent to provide

³⁰ The comments of note 28 above are equally applicable here.

³¹ The comments of note 28 above are equally applicable here.

³² For a full list of details, see Article 3 of the Passport Act.

(*verstrekken*) the travel document in the first place. Article 40 of the Passport Act determines which public authorities are competent to provide the specific travel documents and, consequently, to declare them expired. According to Article 40(1)(a) of the Passport Act, within the European part of the Netherlands, the authority competent to provide for and, thus, to declare the expiration of a national passport (*nationaal paspoort*), a travel document for aliens (*reisdocument voor vreemdelingen*) or a travel documents for refugees (*reisdocument voor vluchtelingen*) is the mayor of the municipality in which the person concerned is registered in the basic administration for persons (*basisadministratie personen, BRP*). According to Article 40(1)(d) of the Passport Act, in case the person concerned is abroad, meaning not within the territory of the Kingdom of the Netherlands, the authority competent to provide for and, thus, to declare the expiration of these travel documents is the Minister of Foreign Affairs (*Minister van Buitenlandse Zaken*).³³ According to Article 40(2) of the Passport Act, the authority competent to provide for and, thus, to declare the expiration of a diplomatic passport (*diplomatiek paspoort*) or a services passport (*dienstenpaspoort*) is the Minister of Foreign Affairs (*Minister van Buitenlandse Zaken*). According to Article 40(3) of the Passport Act, the authority competent to provide for and, thus, to declare the expiration of an emergency travel document (*nooddokument*) is the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*) or an authority appointed by him, except in case the person concerned is not within the territory of the Netherlands, in which case the competent authority is once again the Minister of Foreign Affairs (*Minister van Buitenlandse Zaken*).

According to Article 44(2) of the Passport Act, once the competent authority receives the request for the declaration of expiration of a travel document, he makes sure that the grounds on which the request is based are still applicable to the person concerned.

According to Article 44(3) of the Passport Act, the competent authority can request the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*) to have all information related to the person concerned, as laid down in the register in accordance with Article 25(3) of the Passport Act, send to it. In accordance with Article 44(4) of the Passport Act, in case the grounds on which the request for the declaration of expiration of the travel document still apply, the competent authority must notify the person concerned of his intention to declare the travel document to be expired, as soon as possible but no later than four weeks after he received the request. Within two weeks, the person concerned can request the competent

³³ Please note that these are the authorities relevant for the scope of this questionnaire. Article 40 of the Passport Acts also appoints the competent authorities for the other countries that are part of the Kingdom of the Netherlands: Aruba, Curacao and Saint Martin, as well as the so-called public bodies (*openbare lichamen*), e.g. Bonaire, Sint Eustatius, and Saba.

authority to delay its decision for a period of eight weeks, in order for the person concerned to attempt to reach an agreement with the requesting authority. The aim of that agreement is to resolve the grounds for the request, so that the travel document can be returned to the person concerned. This can be done under a restriction of the period of validity or the territorial validity of that document. In case such an agreement can be reached within those eight weeks, the travel document shall be returned to the person concerned within a period of four weeks, in accordance with Article 45(1) of the Passport Act.

However, according to Article 45(2) of the Passport Act, in case no request for the delay of its decision is made or no agreement can be reached within those eight weeks, the competent authority will proceed with the declaration of expiration of the travel document, unless he is of the opinion that such an action would result in a disproportionate disadvantaging of the person concerned. In that case, in accordance with Article 45(3) of the Passport Act, the competent authority informs the Minister of the Interior and Kingdom Relations of its decision, as well as the requesting authority's stance on the matter.

According to Article 46(1) of the Passport Act, the final decision to declare a travel document expired (*beschikking tot vervallenverklaring*) must be taken within a period of four weeks after the period of eight weeks in Article 45(2) of the Passport Act has passed. Such a decision (*beschikking*) can be challenged under Dutch administrative law, as the General Administrative Law Act (*Algemene wet bestuursrecht*) is fully applicable.³⁴

Are these grounds for withdrawal considered compatible with the substantive and procedural requirements imposed by Articles 27 and following (public policy, public security, public health, access to judicial remedies etc.) of Directive 2004/38/EC?

(Note that this question does not pertain to withdrawal of nationality, which is a different matter, and that ID cards normally cannot be withdrawn.)

To start with, the researcher wishes to emphasize that the withdrawal or declaration of expiration of passports/travel documents is not strictly speaking a direct decision of expulsion. If the Dutch authorities withdraw the travel documents of a Dutch national, this does not mean that he or she shall be compelled to leave Dutch territory. Quite the contrary, the withdrawal of travel documents shall have the effect of preventing the exit

³⁴ Moreover, an emergency document can be provided in case the person concerned has the Dutch nationality, is residing outside of the Kingdom of the Netherlands and intends to return to the territory of the Netherlands, in accordance with Article 46(2) of the Passport Act.

of the Dutch territory. When it concerns travel documents for aliens (non-Dutch nationals), the legal basis for lawful residence is a residence permit, not strictly speaking a travel document, so again, the withdrawal of travel documents shall not automatically lead to expulsion as meant by Articles 27 and 28 of Directive 2004/38.

However, if the concern is about the indirect effect of having no travel documents, the compatibility of the grounds for refusal, withdrawal or expiration is as follows.

The grounds for refusal or declaration of expiration of Arts. 18-24 of the Passport Act described above do constitute grounds of public policy or public security, as do the grounds for withdrawal listed in Art. 54 Passport Act. Public health is not among the reasons for refusal, expiration or withdrawal.

Notwithstanding the foregoing, it is questionable whether these grounds meet the threshold of being “serious” or even “imperative” as meant in Art. 28(2) and (3) of Directive 2004/38, since these thresholds are high and interpreted in a strict manner. Since a case-by-case appreciation has to be made, it is at present impossible to make a more firm statement about the compatibility of the grounds for refusal, expiration or withdrawal with Arts. 27 and 28 of Directive 2004/38.

It is, however, possible to draw the general conclusion that the procedure of notification (Art. 44(4) Passport Act) and consultation, and the subsequent possibilities of administrative and judicial remedies (the decision to refuse, of expiration or to withdraw are administrative decisions falling within the scope of application of the normal administrative procedures of the Dutch General Administrative Law Act [*Algemene Wet Bestuursrecht*]), meet the requirements of offering sufficient procedural safeguards under Art. 31 of Directive 2004/38. In particular, Art. 45(2) of the Passport Act provides expressly for the obligation to take into account the proportionality of the consequences of the decision to refuse/expiration/withdraw for the passport holder [*“tenzij hij van oordeel is dat de aanvrager respectievelijk de houder door deze beslissing onevenredig zou worden benadeeld”*].

Question 8 – Acquisition by non-nationals at public offices

Which types of travel documents, if any, can be obtained at public offices in your Member State by nationals of other Member States?

There are only two types of travel documents that can be obtained by nationals of other Member States.

First, according to Article 11(1) of the Passport Act, every foreigner having the official status of refugee that has been admitted to the Netherlands in accordance with Article

33 of the Aliens Act 2000 (*Vreemdelingenwet 2000*) can obtain a travel document for refugees (*reisdocument voor vluchtelingen*), which is valid for 5 years. Article 33 of the Aliens Act 2000 generally concerns aliens to whom a residence permit is granted for an undetermined period.³⁵ According to Article 11(2) of the Passport Act, every foreigner that has been admitted to the Netherlands in accordance with Article 28 of the Aliens Act 2000, can obtain a travel document for refugees, which is valid for a minimum of one year and a maximum of three years. Article 28 of the Aliens Act 2000 generally concerns aliens to whom a residence permit is granted for a limited period.

Second, according to Article 13 of the Passport Act, every foreigner that has been admitted to the Netherlands as being stateless, can obtain a travel document for aliens (*reisdocument voor vreemdelingen*), which is valid for a minimum of three months. Moreover, according to Article 14 of the Passport Act, aliens other than those named in the abovementioned articles, who either cannot obtain a travel document in another country or can demonstrate that it cannot reasonably be expected from them to apply for a travel document in another country, can also obtain a travel document for aliens.

Indeed it seems highly hypothetical that a national of another Member State would qualify for one of these documents. In order to obtain any of the other travel documents, it is required to have the Dutch nationality.

If nationals of other Member States can indeed obtain such documents at public offices in your Member State, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)

In the answer to Question 5 it was held that, according to Article 26(1)(a) of the Implementing Regulation on Passports in the Netherlands 2001, the mayor of the municipality is the competent authority to receive a request for, *inter alia*, a travel document for refugees (*reisdocument voor vluchtelingen*) and a travel document for aliens (*reisdocument voor vreemdelingen*). It was also stated that, in case the applicant is registered in the basic administration for persons (*basisadministratie personen, BRP*), these travel documents are to be obtained at the Civil Affairs Desk (*Loket Burgerzaken*) of the municipality in which he or she lives. For those cases in which the applicant has not (yet) been registered in the BRP, secondary legislation appoints the mayors of specific municipalities to be the competent authority.

Accordingly, there are no differences with regard to the appropriate venue that applies to this group, compared to nationals of the Netherlands.

³⁵ See < http://wetten.overheid.nl/BWBR0011823/volledig/geldigheidsdatum_15-02-2016 > accessed 15 February 2016.

With regard to the applicable procedure, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. longer/shorter timeframes)

There are no differences with regard to the applicable procedures that apply to this group, compared with nationals of the Netherlands.

With regard to the associated costs, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. surcharges)

There are no differences with regard to the associated costs that apply to this group, compared with nationals of the Netherlands.

Is it mandatory for long-term residing EU citizens to have registered their presence with the relevant authorities beforehand (in line with Article 8(1) of Directive 2004/38/EC, if implemented in your Member State) before they are able to apply for said documents?

Yes, according to Article 2.38 of the Act on the Basic Administration for Persons (*Wet Basisregistratie Personen*), EU citizens residing within the Netherlands for at least four months are required to register to the aforementioned basic administration for persons (*basisadministratie personen, BRP*) within their municipality of residence.³⁶ Moreover, failure to comply with that requirement can result in an administrative fine up to € 325.³⁷

Is information on the acquisition of the relevant travel documents adequately made available in (at least the main) other EU languages?

Information on the acquisition of the relevant travel documents is made available on the English website of the Dutch central government (www.government.nl).³⁸ However, the information is not available in any of the other main EU languages.

Question 9 – Policy for extension and renewal in consular representations in other Member States

Does your Member State adhere to a uniform general policy with regard to the extension or renewal of travel documents at its consular representations abroad, or do the conditions and procedures applied differ per country?

³⁶ See < <https://www.government.nl/topics/immigration/question-and-answer/as-an-eu-citizen-how-can-i-stay-in-the-netherlands-for-longer-than-three-months> > accessed 20 February 2016.

³⁷ See < <http://wetten.overheid.nl/BWBR0033715/2015-09-01> > accessed 23 February 2016.

³⁸ See < <https://www.government.nl/topics/identification-documents/contents/passports-identity-cards-and-dutch-nationality-certificates> > accessed 20 February 2016.

The Netherlands adheres to a uniform general policy with regard to the extension or renewal of travel document at its consular representations abroad. The rules and procedures for acquisition of travel documents in consular representations are set out in the Implementation Regulation on Passports Foreign Countries (*Paspoortuitvoeringsregeling Buitenland 2001*).³⁹

Compared to nationals resident in your own country, do any additional conditions and requirements apply at your Member State’s consular representations in other countries, when nationals resident in those other countries seek to obtain or renew travel documents?

Some procedural differences can be identified between the situation where nationals resident in other countries seek to obtain or renew travel documents at their consular representations, compared with the situation where nationals resident in the Netherlands do so. Primarily, these differences see to the way the applicant’s Dutch nationality is being determined in the course of his application. Acquiring necessary certainty as to the applicant’s nationality is an important element of the application process.

On a preliminary side note, it must be kept in mind that the Dutch identity card (*Nederlandse identiteitskaart*) can only be obtained at consular representations in those countries where it is a valid proof of identity.⁴⁰

According to Article 9 of the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*), applicable in the situation where a national residing in the Netherlands seeks to obtain or renew a travel document, in order to acquire the necessary certainty regarding the applicant’s nationality in case he is an inhabitant of one of the Dutch municipalities, the public authorities rely on the information in the basic administration for persons (*basisadministratie personen, BRP*). Moreover, the article holds that, should any uncertainty as to the applicant’s nationality remain, a focussed investigation will be issued. Such an investigation sees to the verification of the applicant’s nationality on the basis of documents issued by public authorities, to be provided by the applicant, such as a legalised birth certificate for example.

According to Article 9 of the Implementing Regulation on Passports Foreign Countries 2001 (*Paspoortuitvoeringsregeling Buitenland 2001*), applicable in the situation where nationals residing in other countries seek to obtain or renew a travel document at a Dutch consular representation, the determination of the applicant’s nationality is done

³⁹ See < http://wetten.overheid.nl/BWBR0012810/geldigheidsdatum_16-02-2016 > accessed 16 February 2016.

⁴⁰ See < <https://www.rijksoverheid.nl/onderwerpen/paspoort-en-identiteitskaart/inhoud/paspoort-aanvragen-in-het-buitenland> > accessed 22 February 2016.

differently.⁴¹ According to Article 9(1) of the Implementing Regulation, in order to acquire necessary certainty regarding the Dutch nationality of the applicant, the authorities will rely on a travel document previously issued by the Netherlands and other information to be provided during the application. Precisely for this type of situation, an application form is available on the website of the Dutch central government.⁴²

According to Article 9(2) of the Implementing Regulation, in case the applicant is not able to provide his previously issued travel document, the authority will rely on the travel document administration (*reisdocumentenadministratie*) to access the information related to said document. Should this information be residing at another authority at the time of the application, the authority concerned will be requested to provide a transcript free of charge, in accordance with Article 9(3). Lastly, similar to the procedure applicable to nationals residing in the Netherlands, Article 9(4) of the Implementing Regulation holds that should any uncertainty as to the applicant's nationality remain, a focussed investigation will be issued. Again, such an investigation sees to the verification of the applicant's nationality on the basis of documents issued by public authorities, to be provided by the applicant, such as a legalised birth certificate for example.

Accordingly, there are slight procedural differences when comparing the application process for nationals resident in your own country, to that for nationals residing in other countries seeking to obtain or renew travel documents at consular representations. However, to what extent these must be regarded as additional conditions and requirements, is open to debate.

Are reduced rates applicable for specific categories of persons (e.g. costs waived for recipients of social benefits)?

No reduced rates are applicable for special categories of persons. However, the associated costs applicable to the obtainment of a travel document at consular representations abroad, are higher compared with those applicable to obtainment in the Netherlands.⁴³

The associated costs at consular representations abroad are as follows.⁴⁴ The national passport (*nationaal paspoort*) costs €128,44, or €115,20 should the applicant not yet

⁴¹ See also Article 36 of the Implementing Regulation on Passports Foreign Countries 2001.

⁴² See <

<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/formulieren/2011/06/21/aanvraagformulier-paspoort/paspoortaanvraagformulier-180314.pdf> > accessed 9 March 2016.

⁴³ Cf. the answer to question 5 above.

⁴⁴ See < <https://www.rijksoverheid.nl/onderwerpen/paspoort-en-identiteitskaart/documenten/brochures/2010/11/29/consulaire-tarieven> > accessed 21 February 2016.

have reached the age of eighteen. The laissez-passer or emergency passport (*noodpaspoort*) costs €46,61. The Dutch identity card (*Nederlandse identiteitskaart*) costs €115,58, or €93,66 should the applicant not yet have reached the age of eighteen. The increased associated costs can at least partly be explained by the fact that the travel documents have to be made in the Netherlands and afterwards be sent to the consular representation abroad.

On this note, reference must be made to a report delivered by the Dutch national ombudsman in 2010.⁴⁵ The report addressed a controversial issue concerning the possibilities for Dutch nationals residing abroad to obtain or renew their travel documents and, consequently, the costs associated thereto. As the process of creating a travel document had become highly technical over the years, due to the inclusion of a digital chip containing biometric characteristics for instance, the associated costs had risen as well. Due to financial considerations, the Dutch government had decided that the possibility to obtain travel documents was to be limited to those honorary consulates (*honoraire consulaten*) that would receive at least 500 applications for passports on a yearly basis. As a result, many consular representations would no longer provide for travel documents.

As the report indicated, this decision can potentially have a disastrous impact on the travel costs associated with the simple renewal of a travel document. The report illustrated these effects with an example of a Dutch national residing in Brazil, who now had to travel 4400km to the embassy in capital Brasilia, while there was a honorary consulate merely 140km from his residence. Another example was that of a family living in Trondheim, Norway, who now had to travel 2400km to Oslo in order to renew their travel documents, as the honorary consulate does not meet the criteria.

Responding to the report, the former Minister of Foreign Affairs acknowledged the need to expand the possibilities for obtaining or renewing travel documents by nationals residing abroad.⁴⁶ As a result, the number of so-called border municipalities (*grensgemeenten*) was increased. Nationals residing abroad can use these municipalities for obtaining travel documents. The most notable example is the border municipality of Haarlemmermeer, having an office at Schiphol airport.⁴⁷ Nationals living abroad can schedule an appointment online, after which they can travel to Schiphol in order to obtain their travel document.

Although the Ombudsman seems to be positive as to the functioning of these border municipalities in regards of processing time, the question remains whether or not these truly absolve much of the travel and accommodation costs related to the

⁴⁵ See < https://www.nationaleombudsman.nl/uploads/rapport2010-191_1.pdf > accessed 9 March 2016.

⁴⁶ See < https://www.nationaleombudsman.nl/uploads/rapport/2015_173.pdf > accessed 9 March 2016.

⁴⁷ See < <https://haarlemmermeergemeente.nl/taak/gemeentebalie-schiphol> > accessed 9 March 2016.

acquisition of travel document for nationals living abroad. After all, the nationals still have to travel to the Netherlands in order to apply for a (renewal of) their passport.

Which information and certificates are nationals of your own country expected to adduce at consular representations in other EU Member States when they there wish to apply for travel documents for a newborn child?

There are several documents required when Dutch nationals wish to apply for a travel document for their newborn child abroad.⁴⁸

First, a complete copy of the birth certificate or a recent extract from the child custody register, stating the place of birth and full names of both the parents, is required. Second, proof of legal residence in the country of application for both the child and the parents must be provided. Third, a passport photograph complying with the Dutch rules is required. Fourth, a completely filled-out and signed passport application form (*paspoortaanvraagformulier*) is required. Fifth, if applicable, a complete copy of the parents' marriage certificate is required. Sixth, proof that at least one of the parents possesses the Dutch nationality is required. Adducing a Dutch travel document suffices. Finally, if applicable, the Citizens Service Number (*burgerservicenummer, BSN*) must be provided.

Furthermore, it is important to note that the child must appear in person before the consular representation abroad, so the parent(s) must bring their baby with them.

Are authenticated translations required, or are the original copies, accompanied by informal transcripts, considered as equivalent and acceptable for the issuing of such travel documents?

All abovementioned documents must be provided in twofold: both the original and a copy. Documents that have been issued outside of the Netherlands must be authenticated. Such documents will only be accepted if issued by the country in which the legal fact took place. Only documents that have been issued in English, French or German are accepted without translation. Documents that have been issued in any other language must be accompanied by an authenticated translation by a sworn translator.⁴⁹

⁴⁸ See the useful checklist provided by the Dutch embassy in the UK < <http://verenigdskoninkrijk.nlbassade.org/binaries/content/assets/postenweb/shared/checklists-paspoorten/checklist---paspoort-eerste-aanvraag-minderjarige> > accessed 21 February 2016.

⁴⁹ See < <http://verenigdskoninkrijk.nlbassade.org/shared/burgerzaken/burgerzaken%5B2%5D/paspoorten-identiteitskaarten/paspoort/eerste-aanvraag/eerste-aanvraag-paspoort-minderjarige.html> > accessed 21 February 2016.

Question 10 – Acquisition for newborn children of non-nationals at domestic public offices

Is it possible for non-nationals to obtain travel documents for a newborn child at the domestic public offices in your Member State? If not, skip to Question 9.

According to Article 3 of the Dutch Nationality Act (*Rijkswet op het Nederlandschap*), the parents' nationality is conferred upon the child at birth.⁵⁰ Accordingly, as the travel documents most common in usage require the applicant to have the Dutch nationality, non-nationals cannot obtain travel documents for their newborn children at the domestic public offices in the Netherlands.

However, in accordance with the answer to Question 8 above, it is possible for non-nationals to obtain the travel document for refugees (*reisdocument voor vluchtelingen*) or the travel document for aliens (*reisdocument voor vreemdelingen*). As the legislation referred to in this questionnaire generally does not differentiate between children and grownups, when it comes to the eligibility for travel documents, it must be assumed that, if the conditions set out under that question are satisfied by the newborn child, it too must be able to obtain either one of those travel documents. To this extent, Article 15a of the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*) holds that, when a child is born on Dutch territory and the parents possess a valid residence permit required for the obtainment of a travel document for aliens, it is to be presumed that the child too fulfils all requirements for such document.

If so, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)

There are no differences with regard to the appropriate venue that apply to this group, compared with nationals of the Netherlands.

If the possibility is there, which information and certificates are non-nationals expected to adduce at national public offices when applying for travel documents for a newborn child?

When applying for the travel document for aliens (*reisdocument voor vreemdelingen*), the applicant must adduce: a valid residence permit in accordance with Article 28(1) jo 28(2) of the Passport Act (*Paspoortwet*), documents demonstrating that it is not possible to obtain a travel document from the country of origin in accordance with Article 14 of

⁵⁰ See < <http://wetten.overheid.nl/BWBR0003738/2014-04-01> > accessed 21 February 2016.

the Passport Act, a passport photograph in accordance with Article 28(1) of the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*), any previous travel documents issued by the Netherlands or any other country in accordance with Article 29(1) of the Passport Act, and finally, a written consent from both parents or those who have parental authority as well as their travel documents.

When applying for a travel document for refugees (*reisdocument voor vluchtelingen*), the applicant must adduce: a valid residence permit attesting to their status as refugee in accordance with Article 28(1) jo 28(2) of the Passport Act, a passport photograph in accordance with Article 28(1) of the Implementing Regulation on Passports in the Netherlands 2001, any previous travel documents issued by the Netherlands or any other country in accordance with Article 29(1) of the Passport Act, and finally, written consent from both parents or those who have parental authority as well as their travel documents.

If the possibility is there, is the timeframe for the issuing of such travel documents noticeably longer or shorter, as compared to when own nationals apply for travel documents for their children?

This question is not applicable as Dutch nationals will not apply for the travel document for refugees (*reisdocument voor vluchtelingen*) or the travel document for aliens (*reisdocument voor vreemdelingen*). However, the process of obtaining these two types of travel document takes considerably longer than the process of obtaining any of the more common travel documents, as it can take up to several months.

Question 11 – Travelling with minors

Background example (fictitious)

Lena is a twelve-year old Austrian girl from Vienna, taken out by her Turkish stepfather for a mini-holiday to be spent in Istanbul. They travel by car, intending to pass through Hungary, Romania and Bulgaria along the way.

Arriving at the border between Hungary and Romania, she and her stepfather are stopped by two immigration officers, and requested to produce a written statement from Lena's mother confirming that she consents to the trip, before they are both allowed to continue their journey.

In addition to their own valid travel document, does your country require minors travelling alone to produce any extra (official) documents signed by their parents or legal guardian(s) authorising them to travel?

The Dutch Ministry of Defence requires a ‘consent letter for minors traveling abroad’ signed by the parents or the legal custodian, when a person who is not his or her parent or legal custodian accompanies the child.⁵¹ The form requires several appendices to be attached to the signed document, such as a copy of travel document of the consent giving parent, a recent certified extract of residence, a certified extract of birth certificate, a recent certified extract custody register (this can be requested from the court), possibly the custody or access court order, and possibly a copy of the divorce decree. According to the Royal Military Police,⁵² this form and additional documents should also be provided in case a minor is traveling unaccompanied.

In addition to their own valid travel document, does your country require minors travelling with adults who are not their legal guardian to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?

The Dutch Ministry of Defence requires the aforementioned ‘consent letter for minors traveling abroad’, in case minors are traveling with adults who do not possess their parental authority.⁵³ This practice is highly comparable to the one illustrated by the fictitious background example provided above.

Furthermore, the Royal Military Police can ask a single parent or legal custodian travelling with a child to provide the following documents: the child’s return ticket, a recent extract from the child custody register; a recent authenticated copy from the basic administration for persons (*basisadministratie personen, BRP*) of the municipality where the child resides, a copy of the personal details page of the passport of the consenting parent, if possible a statement regarding child custody and visiting rights; if possible the parenting plan and, finally, if possible the child’s birth certificate.⁵⁴

In addition to their own valid travel document, does your country require minors travelling with only one parent to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?

The answer to the previous sub-question is equally applicable to minors traveling with only one parent.

⁵¹ See < <https://www.defensie.nl/binaries/defensie/documenten/formulieren/2015/07/27/consent-letter-for-minors-travelling-abroad-english/consent-letter-for-children-travelling-abroad-version-11-2015.pdf> > accessed 20 February 2016.

⁵² Contacted by phone.

⁵³ See supra note 25..

⁵⁴ See < <https://www.defensie.nl/english/topics/travel-documents/contents/travelling-with-children> > accessed 20 February 2016.

PART III – INCLUSION OF BIOMETRIC DATA AND ITS EFFECTS

Introduction

Council Regulation 2252/2004/EC requires Member States to collect and store biometric data, including fingerprints, in the storage medium of passports and other travel documents, and require that such data be used for verifying the authenticity of the document or the identity of the holder. Further measures may be introduced with regard to the processing and use of such data, or requiring the inclusion of additional biometric data going beyond the scope of the Regulation. The adoption of the domestic rules concerned may have given rise to controversies, and they could potentially have had a ‘chilling effect’ on the acquisition of travel documents. This warrants further inquiry, also e.g. with regard to possibly instigated judicial or non-judicial procedures attempting to curb the discretionary powers exercised by the Member State legislature, and/or targeting the underlying EU instrument.

Question 12 – Inclusion of fingerprints (pursuant to EU law) and its possible effects

Did your country already introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents *before* the adoption of Regulation 2252/2004/EC? If so, skip to Question 13!

The inclusion of biometric data, such as fingerprints, in travel documents was already discussed by the Dutch legislature since 1997,⁵⁵ in the context of travel document fraud by so-called “look-a-likes”, i.e., persons that resemble the passport holder in such a way that they escape detection. In 1998, a report was drawn up by the Ministry of The Interior and Kingdom Relations that explored the possibilities of including biometric data in travel documents.⁵⁶ In turn, this report led to further research on privacy issues and public acceptance of the introduction of such biometric data, the outcomes of which were presented to the Dutch Parliament on 19 December 2003. One of the conclusions of these reports was that the inclusion of fingerprints in travel documents were the most suitable measure to combat look-a-like fraud.⁵⁷ Also, the 9/11 attacks in New York

⁵⁵ See file 25 764 of the Dutch Congress [Tweede Kamer], searchable at: <http://zoek.officielebekendmakingen.nl>, and more specific a letter from the Minister of The Interior and Kingdom Relations of 9 December 1997, TK 1997-1998, 25 764, nr. 3.

⁵⁶ 12 June 1998, TK 1997-1998, 25 764, nr.7.

⁵⁷ TK 2003-2004, 25 764, nr. 22.

City, USA, strengthened the Dutch government's resolve to heighten travel document security. Subsequently, a pilot project was conducted from August 2004 until February 2005 in six municipalities, aimed at gaining insight into the practicalities of including a digital facial image and fingerprints in travel documents.

A legislative proposal enabling the introduction of facial images and fingerprints in travel documents was introduced as early as 22 April 2002,⁵⁸ but once discussions and negotiations on this topic started on an EU level, the Dutch legislature decided to wait until the adoption of Reg. 2252/2004. So the inclusion of biometric data was extensively discussed, but not put into law before the entry into force of Reg. 2252/2004.

Were there any *non-judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?

Several citizens⁵⁹, NGOs and academics objected to the initial way in which fingerprints were stored in the Netherlands, as introduced by the 2009 legislative amendment of the Passport Act.⁶⁰ In that amendment, the Dutch legislature had gone further than Reg. 2252/2004 required (or perhaps: allowed) by ordering the storing of all the biometric data of passports in a central database which was accessible online 24/7, not only for verification purposes, but also for criminal investigation purposes (including counter-terrorism), for a duration of eleven years. According to several Dutch NGOs and experts, this central fingerprint database would constitute a serious violation to the right to privacy.⁶¹ Before the adoption of this law by the Senate, the Dutch Data Protection Authority issued a report that criticized the amendment and

⁵⁸ 22 April 2002, TK 2001-2002, 28 342 (R 1719).

⁵⁹ A group of citizens that protested against the inclusion of biometric data and the possibilities of mass surveillance, also started various judicial proceedings (described in the next question), and eventually united themselves in the foundation "Vrijbit". See for more information and an overview of their procedures and activities www.vrijbit.nl.

⁶⁰ Stb. 2009, 252, available at: <https://zoek.officielebekendmakingen.nl/stb-2009-252.html>

⁶¹ See for instance the Addendum to the Commentary on the 4th periodic report of the Netherlands on the International Covenant on Civil and Political Rights (ICCPR), (2009) drawn up by the Dutch section of the International Committee of Jurists (NJCM) with contributions by the NGOs "Art. 1" (Dutch National Association against Discrimination), Netwerk VN-Vrouwenverdrag (Dutch CEDAW Network), VluchtelingenWerk Nederland (Dutch Council for Refugees), and submitted also on behalf of NGOs Aim for Human Rights (former Humanist Committee on Human Rights), CG-Raad (Dutch Council for the Chronically Ill and the Disabled), COC Nederland (Dutch Association for Integration of Homosexuality), Johannes Wier Foundation for Health and Human Rights, and Justitia et Pax Nederland. Available online at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NLD/INT_CCPR_NGO_NLD_96_977_2_E.pdf.

notably the central database.⁶² However, these initial protests proved futile, since the legislature saw no reason to change the legislative proposal. The central database was not yet in function directly after the passing of the legislative proposal, so meanwhile, the (four) fingerprints that the amended Passport Act required were stored in the decentralized data registries of each municipality.

However, in the course of the years after 2009, the Dutch government did see reasons for a change in the way they had amended the Passport Act and the Implementing regulations.

This may have a plethora of causes, such as the various judicial and non-judicial protests and proceedings by citizens, and the influential criticism of, for instance, the Dutch Scientific Council for Governmental Policy (*Wetenschappelijke Raad voor het Regeringsbeleid*, hereafter referred to as “WRR”), which published in 2010 a report in which the biometric passport was heavily criticized.⁶³ According to the WRR, there had been insufficient regard for the right to privacy, the lack of security in the proposed central database, and the risk of function creep when it came to access to the central database. Moreover, the report criticized the lack of transparency and proper parliamentary discussion in the legislative process, presenting citizens with the legislative amendments in 2009 as a near *fait accompli*, which resulted in the various protest mentioned above. Furthermore, the legislative procedure as well as the executive follow-up of the amendments lacked transparency and accountability, and the WRR noted that there was insufficient proof that look-a-like fraud, the combating or preventing of which constituted the initial aim of the biometric passport, actually happened on a sufficiently frequent scale.⁶⁴ After the publication of the WRR’s report, several members of parliament asked the minister in charge critical questions.⁶⁵

During the same legislative debates, the Minister of The Interior and Kingdom Relations sent a letter to parliament concerning the storage of biometric data in the central database. He concluded that there had been insufficient developments in technology to achieve the aim of a reliable verification/identification of the passport holder, and that there were a high percentage of faulty identifications. He therefore expressed his intention to put the central database on hold (the central database had not

⁶² <https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/adv/z2007-00010.pdf>

⁶³ WRR, Vincent Bohre, “Happy Landings? Het biometrische paspoort als zwarte doos.”, WRR 2010, available at: http://www.wrr.nl/fileadmin/nl/publicaties/PDF-webpublicaties/Happy_Landings_.pdf

⁶⁴ http://www.wrr.nl/fileadmin/nl/publicaties/PDF-webpublicaties/Happy_Landings_.pdf, p. 148-155.

See also the admission of the State secretary of the Interior and Kingdom Relations on the lack of empirical data on look-a-like fraud: <https://zoek.officielebekendmakingen.nl/ah-tk-20102011-157.html>

⁶⁵ <https://zoek.officielebekendmakingen.nl/kst-25764-44.html> ,

<https://zoek.officielebekendmakingen.nl/kv-tk-2010Z15780.html> ,

<https://zoek.officielebekendmakingen.nl/kv-tk-2011Z01113.html>

been functioning yet).⁶⁶ In a further letter to the parliament, the Minister expressed his intention to amend the Passport Implementing Regulations in such a way that the duration of storage would be limited to the period between the application for the travel document and the actual delivery of it, and that the additional two fingerprints should no longer be required.⁶⁷

During the process of the most recent amendment of the Passport Act, in 2012, the Dutch Data Protection Authority was again consulted on the new amendment of the Passport Act (formally adopted in December 2013), and this time, the storage of fingerprints in the central database for a period of time beyond the issue of the travel documents in question, was abandoned. However, the Data Protection Authority was critical of the extension of the period of validity of passports from five to ten years, since it was unclear whether the technological safety of the chip could be guaranteed for such a long period.⁶⁸

In June 2012, the parliament even adopted a motion to urge the government to put the issue of fingerprints on the agenda in the EU, hoping that the requirement as provided for by Reg. 2252/2004, could be abandoned, since the effectiveness of the taking of fingerprints for verification and identification purposes was questionable.⁶⁹ The Minister of the Interior and Kingdom Relations reported back in April 2014 that his consultations with other Member States had been unfruitful.⁷⁰ In August 2014, the parliament urged the Minister again to try to put the issue of fingerprints on the EU agenda, since there had been a new European Parliament after elections. The Minister promised to try again, but thought his chances to be low.⁷¹

Were there any *judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?

With amendment of the Passport Implementing Regulations and the Passport Act in 2009, the Dutch legislator added the requirement of the taking of two additional

⁶⁶ Letter of 26 April 2011, available at: <https://zoek.officielebekendmakingen.nl/kst-25764-46.html>

⁶⁷ Letter of 19 May 2011, available at: <https://zoek.officielebekendmakingen.nl/kst-25764-48.html>. In the same letter, the Minister announced his intention of amending the status of the Dutch Identity cards so that they no longer fell within the scope of application of Reg. 2252/2004.

⁶⁸ <https://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/adv/z2012-00130.pdf>

⁶⁹ <https://zoek.officielebekendmakingen.nl/dossier/25764/kst-25764-60>. The percentage of errors was as high as 21%, see the news website <https://www.privacynieuws.nl/nl/nieuwsoverzicht/lichamelijke-integriteit/vingerafdrukken/6479-slechte-kwaliteit-vingerafdrukken-eind-2009-al-bekend-bij-bijleveld.html>

⁷⁰ <https://zoek.officielebekendmakingen.nl/kst-25764-77.html>

⁷¹ <https://zoek.officielebekendmakingen.nl/kst-25764-84.html>

fingerprints to the requirement of Reg. 2252/2004, totalling to four fingerprints. Furthermore, because the Passport Act initially awarded the Dutch identity card the official status of international travel document, the amendments made as execution measures for Reg. 2252/2004 were equally applicable to the Dutch identity card. The inclusion of biometric data in passports and in the identity card, as well as the planned storage of the data in the aforementioned central database, has led to several judicial procedures.

The persons who started the proceedings all had applied for a new passport or Identity card, but had refused to give their fingerprints or objected to the digital rendering of their facial image. The local authorities at issue (the mayors of their respective municipalities), rendered formal decisions refusing the issue of the passport and/or Identity card. It is against these administrative decisions that the claimants started judicial proceedings, in accordance with the regular administrative procedures under the Dutch General Administrative Law Act.

Most claimants base their objections on the following grounds⁷²:

- the taking and storage of fingerprints and/or digital facial image is an unjustified violation of their right to privacy, right to property, human dignity and to their bodily integrity;
- the large scale collection and storage of fingerprints and digital facial images contributes to a governmental infrastructure that is vulnerable to misuse, to which the complainants have principled objections;
- the central storage of the biometric data in the Dutch travel documents registry is unsafe, vulnerable to interference by outsiders;
- the central storage of the biometric data in the Dutch travel documents registry is a covert and illegitimate way of having a large scale database for police surveillance and investigations;
- in a large percentage of cases, namely 20-30%, the fingerprints taken are of insufficient quality to be used for identification purposes;

Eventually, the claimants were dismissed by the lower courts, and appealed to the Dutch Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*), the highest administrative law court in the Netherlands. The Council of State deemed it necessary to refer preliminary questions to the CJEU by reference decision of 28 September 2012.⁷³ The preliminary questions concerned, in short, whether Reg. 2252/2004 applies to national identity cards such as the Dutch identity card, whether Art. 1 (2) of Reg.

⁷² See for a description of the different procedures: <https://vrijbit.nl/rechtszaken.html>

⁷³ Registered as joined cases C-446/12 - 449/12 Willems.

2252/2004 was valid in the light of the right to privacy and protection of personal data, and, if it is valid, whether Art. 4(3) of Reg. 2252/2004 requires Member States to guarantee that the biometric data collected under the Regulation, may not be used for other purposes than the issue of travel documents.⁷⁴

On 17 October 2013, the CJEU handed down its preliminary ruling in a similar case, the German case C-291/12, Schwarz. In that judgment, the CJEU stated that the taking of fingerprints and the facial image as required by Art. 1(2) of Reg. 2252/2004, did not violate the right to privacy or processing of personal data. Furthermore, the CJEU explained that the Regulation did not offer a legal basis for the storage and use of the biometric data and fingerprints for any other purposes than listed in Art. 4(3) of the Regulation.

After the decision in the Schwarz case, the Council of State withdrew its question on the validity of Art. 1(2) of the Regulation, since it deemed it sufficiently answered by the Schwarz case.

Meanwhile, in December 2013, the Passport Act was amended again in order to abandon the requirement of the taking of two extra fingerprints, and to limit the storage of the data to the period between the application for the travel document and the actual delivery of it.

The CJEU ruled on 16 April 2015 in the Willems case.⁷⁵ The CJEU explained, firstly, that national identity cards, such as the Dutch identity card, do not fall within the scope of application of Reg. 2252/2004. Secondly, the CJEU ruled that only the uses of the biometric data as envisaged in Art. 4(3) of Reg. 2252/2004 fall within the scope of application of the Regulation. Consequently, the positive validity review in the light of Arts. 7 and 8 of the Charter of Fundamental Rights as performed by the CJEU in the Schwarz case only concerns the validity (and proportionality) of the uses in that specific context. Other uses of the biometric data fall within the exclusive competences of the Member States and are subject to review by their domestic courts.

The national procedure before the Council of State was resumed on 3 December 2015, and has not led to a final decision yet.

⁷⁴ Raad van State, 28 September 2012, ECLI:NL:RVS:2012:BX8647 (and BX8644, BX8646, BX8648 and BX8654), available at: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2012:BX8647>

⁷⁵ CJEU 16 April 2015, joined cases C-446/12-449/12 Willems et al, ECLI:EU:C:2015:238.

Apart from these administrative proceedings, a group of citizens and an NGO called Privacy First, also started civil proceedings, based upon the unlawfulness of the taking and storing of fingerprints in the aforementioned central database and the wide possibilities for access to this database by other government agencies. The first instance court dismissed their claims in 2010 as inadmissible, arguing that the administrative track was the only appropriate way to bring their claims.⁷⁶ However, this judgment was annulled by the Appeals Court of The Hague, which dismissed the claims on the substance, but treated the merits of the case in more detail as part of the decision on the costs of the proceedings. The Appeals Court found the storage of fingerprints in the central database an unsuitable means for the purpose of identification and verification, and therefore an unjustified restriction of the right to privacy. Since the creation of the central database had already been cancelled by the legislature, the Appeals Court only awarded the costs of the proceedings.⁷⁷

The State appealed this decision in a cassation procedure to the Dutch Supreme Court. On 22 April 2015, the Supreme Court annulled the decision of the The Hague Appeals Court, and followed the same line of reasoning as the District Court: the appropriate *voie de recours* is an administrative procedure.

Do citizens generally experience the inclusion of biometric data in passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the adoption of the Regulation (e.g. on the number of passports issued).

No such data is available for The Netherlands.

Question 13 – Inclusion of fingerprints (unilaterally) and its possible effects

(only to be answered in continuation of Question 12, first sub-question!)

N/A, see Q. 12

Question 14 – Processing of biometric data and possible objections thereto

⁷⁶ District Court of The Hague, 11 August 2010 and 2 February 2011, ECLI:NL:RBSGR:2011:BP2860

⁷⁷ Court of Appeal of The Hague, 18 February 2014, ECLI:NL:GHDHA:2014:412.

Did the measures introduced in your country requiring the collection and retention of the fingerprint data for use in connection with travel documents indicate where the data is to be kept, or is this otherwise known (e.g. a central registry)?

As explained above under question 12, the Dutch legislature initially intended to set up a central database, accessible 24/7 online, in which the fingerprints and the facial image would be stored for eleven years. However, due to protests, a high percentage of errors in the use of fingerprints for identification, and a lack of technological progress, the Dutch government decided in 2011 that such a central database would no longer be set up, and that only two fingerprints would be stored in the decentralized database of the municipality where the application for the travel document is made, and only for the period between the application for the travel document and the actual delivery of it.

Right now, the fingerprint data and all other personal data that is required when applying for a travel document (facial image, names, date and place of birth, etc) is stored in local databases [*reisdocumentenadministratie*] of the municipalities (Art. 3(8) Passport Act). These local databases only keep fingerprints for the period between the application for the travel document and the actual delivery of it (art. 3(9) of the Passport Act). All other personal data, including the facial image, are stored for either 11 years if the travel document is valid for 5 years or less, and for 16 years if the travel document is valid for 5 years or more (Art. 72(4) Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*)).

Art. 72(2) Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*) provides that the collection and retention of the aforementioned data should happen within the so-called “travel document station” [*reisdocumentenstation*], which consists of the machine and software made available by the producer of the travel documents for the purposes of collecting, archiving and communicating the data between the local authority and the producer.⁷⁸

Furthermore, there is a central database in which the requests for refusal, expiration and withdrawal, as discussed under Question 7, are kept.

⁷⁸ See the definition in Art. 1(i) of the Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*): “*de door de leverancier beschikbaar gestelde apparatuur en programmatuur, waarin gegevens met betrekking tot aangevraagde en uitgereikte reisdocumenten worden verwerkt en gearchiveerd en waarmee de gegevensuitwisseling tussen de bevoegde autoriteit en de leverancier plaatsvindt (reisdocumentenaanvraag- en archiefstation).*”

In case such data is kept in a central registry, does domestic law allow for it to be used / processed also for other purposes, such as national security, prevention of crime and identification of disaster victims?

Although there is no central registry, this question is still relevant. Indeed, the data included in the aforementioned local databases is accessible for other purposes, such as consular services, criminal investigation, identification of victims, and most notably, by the Dutch general and military intelligence agencies (see Art. 73 Implementing Regulation on Passports in the Netherlands 2001 (*Paspoortuitvoeringsregeling Nederland 2001*))

In case such data is kept in a central registry, and domestic law allows for it to be used / processed also for other purposes, was this leniency introduced openly and without (public) resistance?

The option for using the data for other purposes was introduced openly, but met with severe public resistance, especially the initial version in which a central database was introduced and in which the four fingerprints would be stored for 11 years.

The current system is a milder version of the initial plan, but nevertheless continues to meet criticism. For instance, the Dutch parliament keeps urging the responsible Minister to try to put the issue of fingerprints on the EU agenda for reconsideration.⁷⁹ The Minister has also sent EU Commissioner Cecilia Malstrom a letter on this issue.⁸⁰ Members of Parliament have also asked critical questions about the safety of storing the biometric data with a commercial company (Morpho) and not keeping it entirely in government control. The Minister responded that there were sufficient safety checks in place.⁸¹ Furthermore, NGO Vrijbit has asked the responsible Minister whether the role of travel document producer Morpho is not too big in the process of the collection and retention of the personal and biometric data. The Minister responded that Morpho works for his Ministry, so that he does not see a reason for starting an investigation.⁸²

In case there was (public) resistance and if there were objections lodged, either during the parliamentary process or in subsequent court procedures, what were the outcomes and effects of these actions?

See the answer under Question 12

Question 15 – Collection of other types of biometric data and possible objections thereto

⁷⁹ <https://zoek.officielebekendmakingen.nl/kst-25764-84.html>

⁸⁰ 23 August 2013, <https://zoek.officielebekendmakingen.nl/blg-315469>

⁸¹ <https://zoek.officielebekendmakingen.nl/ah-tk-20092010-2067.html>

⁸² <https://zoek.officielebekendmakingen.nl/kst-25764-74.html>



Beyond fingerprints, are in your country any other types of biometric data required to be included in passports and other travel documents? If so, which types?

The digital facial image as meant by Art. 1(2) of Reg. 2252/2004 is sometimes also referred to as “biometric data”, but this seems to be incorrect. Apart from fingerprints, no other biometric data is included.

PART IV – ACTUAL OR POTENTIAL OBSTACLES FOR EU CITIZENS

Introduction

Here as anywhere else, differences between legal systems of the various Member States can actually or potentially create particular obstacles for static and mobile EU citizens alike. To an extent, these can be of a predominantly practical or technical nature. At the same time, these may flow from policy practices with regard to selective recognition of travel documents, sanctions imposed in case of non-compliance, denial of consular protection, or the treatment of travelling (accompanied or unaccompanied) minors. In addition to varying from country to country, the relevant conditions and procedures may change without prior notice. The following set of questions see to further expose the hindrances EU citizens may be confronted with.

Question 16 – Hindrances for own nationals as regards the venues and costs for obtaining travel documents

In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by own nationals with regard to the *accessibility of the venues* where travel documents can be obtained or renewed?

In the Netherlands, no substantial hindrances are experienced by our own nationals with regard to the accessibility of the venues where travel documents can be obtained or renewed. The system is highly decentralized, with a result that every national can obtain or renew a travel document in the municipality in which they live.

Equally, in reference to the answers provided to Questions 5-10 above, are any particular hindrances experienced in your country by own nationals with regard to the *costs* associated with the application for and acquisition of travel documents?

The Dutch ombudsman delivered a report in 2013, following a complaint relating to the costs of the obtainment of a travel document.⁸³ An applicant was unnecessarily advised to apply with urgency by the municipality of Emmen, and therefore felt it was unjustified that she had to pay the associated surcharge. In essence, however, this case did not truly relate to the costs associated with the application for and acquisition of travel documents, but rather the wrongdoing of the municipality.

In the Netherlands, there is currently no indication of substantial hindrance being experienced with regard to the associated costs. A possible explanation could be that as

⁸³ See < <https://www.nationaleombudsman.nl/rapporten/2013/086> > accessed 24 February 2016.

of 9 March 2014 the period of validity for passports and identity cards, the travel documents most common in usage, has been extended by five years. Previously, some hindrance was experienced due to the fact that the municipalities would charge additional costs for the loss of a travel document. An additional surcharge would be incurred, even when the loss was accountable to theft. This surcharge was often perceived unfair. However, as of 2013 this hindrance was alleviated by the abolition of that surcharge.

On 9 September 2011, the Dutch Supreme Court (*Hoge Raad*) rendered a judgment in which it held that there was no legal basis for the fees being charged by the municipalities in relation to the application for an identity card.⁸⁴ However, this decision was not welcomed by the Dutch legislature, and accordingly a new legal basis was created within a matter of weeks.⁸⁵

Question 17 – Hindrances for EU citizens as regards the venues and costs for obtaining travel documents

What are the three largest groups of non-national EU citizens that annually visit your country (i.e. short-term residents in the sense of Directive 2004/38/EC, stay < 3 months)?

The Central Bureau for Statistics (*Centraal Bureau voor de Statistiek, CBS*) provides for a detailed breakdown of the origins of migrants coming to the Netherlands.⁸⁶ According to their data of 2013, the three largest groups of non-national EU citizens that annually visit our country as short-term residents (i.e. those who do not register with the BRP) are the Polish (91.970), the German (20.120) and the Belgian (15.530). According to CBS, these proportions have not varied a lot since 2010.

What are the three largest groups of non-national EU citizens present in your country for a more extended duration (i.e. long-term residents in the sense of Directive 2004/38/EC, stay > 3 months)?

According to the data referred to above, the three largest groups of non-national EU citizens that came to the Netherlands as long-term residents (i.e. those who registered with the BRP) in 2013, were again the German (106.080), the Polish (95.540), and the Belgian (40.450).

⁸⁴ HR 9 September 2011, ECLI:NL:HR:2011:BQ4105

⁸⁵ See Reparatiwewet < <https://zoek.officielebekendmakingen.nl/stb-2011-440.html>

⁸⁶ See < <http://www.cbs.nl/nl->

[NL/menu/informatie/beleid/publicaties/maatwerk/archief/2015/migrantenmonitor2015.htm](http://www.cbs.nl/nl-nl/menu/informatie/beleid/publicaties/maatwerk/archief/2015/migrantenmonitor2015.htm) > accessed 23 February 2016.

In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by these particular groups of mobile EU citizens with regard to the *accessibility of the venues* where travel documents can be obtained or renewed? (e.g. necessity to travel abroad, due to the unavailability of consular delegations)

No data available

In reference to the answer provided to Question 8 above, are any particular hindrances experienced in your country by these particular groups of mobile EU citizens with regard to the *timeframe* associated with the application for and acquisition of travel documents for *newborn children*?

No data available

(Note that some of the data necessary to provide an answer to this question may be procured from consular authorities of the relevant Member States, from national complaint bodies such as Ombudsmen, or by contacting mobile EU citizens and inquiring if they have personally encountered any such problems.)

Question 18 – Discrepancies in the recognition of travel documents for identification purposes

Background example (fictitious)

Björn is Swedish and holidaying in Slovakia. He took his ID card issued by a bank with him – which in Sweden is accepted as proof of identity.

Björn could get into trouble however if the Slovakian authorities want to check his identity, because the only valid ID documents they recognise are national ID cards and passports issued by the Swedish authorities.

Are there discrepancies in the travel documents recognised as valid ID in the home country of the three largest groups of non-national EU citizens that annually visit

your country (identified under Question 17), as compared to the travel documents that are recognised in your Member State?⁸⁷

The three groups identified as forming the largest groups of EU citizens that visit The Netherlands, were Polish, German and Belgian. The only discrepancy that the researcher was able to identify based on the information available in the PRADO database, is that the identity card of Poland is in the PRADO database officially registered as a recognized travel document. The Dutch, German and Belgian identity cards are only listed as “identity document”, notwithstanding the fact that the Dutch government has published a list of countries which recognized the Dutch identity card as a valid travel document (including Poland, Germany and Belgium).⁸⁸

Are there discrepancies in the travel documents recognised as valid ID in the home countries of the three largest groups of non-national EU citizens present in your country for an extended duration (identified under Question 17), as compared to the travel documents that are recognised in your Member States?⁸⁹

Same answer as foregoing, since the Member States of origin are the same.

Question 19 – Consequences of expiry or loss

Does your country allow for EU citizens to enter the territory without being in possession of a valid travel document? If so, under which conditions?

Article 4.5(1)(a) of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*) holds that aliens wishing to enter the Netherlands are required, upon request by a civil servant tasked with the border protection, to provide the document for border passing (*document voor grensoverschrijding*) in their possession.⁹⁰ According to case law, a document for border passing must be understood as meaning a valid passport or any comparable travel document.⁹¹ Accordingly, it is not allowed to enter the territory without being in the possession of a valid travel document.

Finally, Article 4.5(3) of the Foreigners Decree 2000 holds that the abovementioned provision also applies to EU citizens.

⁸⁷ For answering this question, reference may be had to the aforementioned PRADO database (<<http://www.prado.consilium.europa.eu/>>).

⁸⁸ <https://www.rijksoverheid.nl/onderwerpen/paspoort-en-identiteitskaart/vraag-en-antwoord/welke-soorten-reisdocumenten-zijn-er>

⁸⁹ Also for answering this question, reference may be had to the aforementioned PRADO database (<<http://www.prado.consilium.europa.eu/>>).

⁹⁰ See <<http://wetten.overheid.nl/BWBR0011825/2015-10-01>> accessed 22 February 2016.

⁹¹ ABRvS 19 May 1989, ECLI:NL:RVS:1989:AN1123

Does your country allow for EU citizens to exit the territory without being in possession of a valid travel document? If so, under which conditions?

Article 4.5(2) of the Aliens Decree 2000 holds that Article 4.5(1)(a) is equally applicable in case aliens wish to exit the Netherlands. Accordingly, EU citizens are not allowed to exit the territory without being in the possession of a valid travel document.

Which sanctions, if any, are applied to *own nationals* that are found to be not in possession of a valid travel document when attempting to enter or exit the country?

Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

According to Article 2 of the Act on the Identification Requirement (*Wet op de identificatieplicht*), every person that has reached the age of fourteen is required by law to provide a valid travel document upon the request of the civil servants mentioned by that article.⁹²

According to Article 447e of the Penal Code (*Wetboek van Strafrecht*) failure to comply with that rule can be sanctioned by a penal fine to the maximum amount of €4.100.⁹³ In practice, however, the Dutch Public Prosecutor's Office (*Openbaar Ministerie, OM*) applies a fine of merely €90 for a failure to provide a valid travel document.⁹⁴

This measure, however, is of a general nature and does not specifically apply to entry or exit of the country by the nationals. To this extent, the more practical consequences of not possessing a valid travel document can be pointed out. Entering or exiting the country by airplane will be impossible, as airlines will not allow someone to board without a valid travel document.

Which sanctions, if any, are applied to *nationals of other Member States* that are found to be not in possession of a valid travel document when residing in, transiting or travelling across your country?

⁹² See < <http://wetten.overheid.nl/BWBR0006297/2014-01-20> > accessed 22 February 2016.

⁹³ See < <http://wetten.overheid.nl/BWBR0001854/2016-01-01> > accessed 22 February 2016.

⁹⁴ See < https://www.om.nl/onderwerpen/boetebase/?boete_tree=21951,21920#beslissingpad2195121920 > accessed 21 February 2016.

Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

The answer to the previous sub-question is equally applicable to nationals of other Member States when residing in, transiting or travelling across the Netherlands.

Question 20 – Grant of consular protection to EU citizens not in possession of valid travel documents

In practice, is in your country consular protection granted by other countries to mobile EU citizens that are found not to be in possession of valid travel documents?

If available, please include in your answer any figures, statistics and/or salient examples with regard to the occurrence of the grant of consular protection in such cases.

The researcher has contacted several embassies and consulates, but was unable to obtain any information on this issue.

Question 21 – Possible documentation-related obstacles suffered in travelling with minors

Are the additional documentation requirements (if any) imposed on minors travelling alone, travelling with adults who are not their legal guardian, and/or travelling with only one parent, known to cause substantial hindrances to mobile EU citizens in practice?

The Dutch central government has increasingly showed its concern with international child abduction.⁹⁵ Hence, the Royal Military Police (*Koninklijke Marechaussee*) takes this matter seriously when border checks are conducted.

As was stated in the answer to question 11, the Dutch Ministry of Defence provides for a ‘consent letter for minors traveling abroad’, in case minors are traveling with adults who do not possess their parental authority.⁹⁶ The following is equally applicable to minors traveling with only one parent. Furthermore, the Royal Military Police asks to provide for the following documents: the child’s return ticket, a recent extract from the child custody register; a recent authenticated copy from the basic administration for

⁹⁵ See < <https://www.government.nl/topics/international-child-abduction/contents/tackling-international-child-abduction> > accessed 20 February 2016.

⁹⁶ See < <https://www.defensie.nl/binaries/defensie/documenten/formulieren/2015/07/27/consent-letter-for-minors-travelling-abroad-english/consent-letter-for-children-travelling-abroad-version-11-2015.pdf> > accessed 20 February 2016.



persons (*basisadministratie personen, BRP*) of the municipality where the child resides, a copy of the personal details page of the passport of the consenting parent, if possible a statement regarding child custody and visiting rights; if possible the parenting plan and, finally, if possible the child's birth certificate.⁹⁷ It should be noted that these documents are not cumulative requirements. They are intended to “enable smoother border crossings”.

Although it is not inconceivable that such an abundance of documents could constitute substantial hindrance, no empirical data is available to back that assumption. Therefore, it must be concluded that the additional documentation requirements are not known to cause substantial hindrance to mobile EU citizens in practice. On that note, the Royal Military Police stated that, although these requirements for further investigation can be perceived as a burden by individual travellers, such an extensive inquiry is not often required. It does not perceive these measures to constitute a substantial hindrance.

⁹⁷ See < <https://www.defensie.nl/english/topics/travel-documents/contents/travelling-with-children> > accessed 20 February 2016.

PART V – ACTUAL OR POTENTIAL OBSTACLES FOR TCN FAMILY MEMBERS

Introduction

Not only EU citizens, but also their TCN family members may experience difficulties in their access to and use of travel documents, either de jure or de facto; those difficulties may moreover be condoned by EU law, or expressly condemned as incompatible with the rules applicable to the relevant situation. A distinction can be drawn between cases in which TCN family members carry the (optional) EU residence card with them when travelling (alone or together), or when they are doing so while not in possession of that document; the legal consequences vary, depending on the scenario at hand.

Question 22 – Possible documentation-related obstacles suffered by TCN family members with residence cards

Background example (fictitious)

Wen-ling, the Chinese spouse of a Dutch national living in Finland, has been issued an EU family member's residence card in Finland. Wen-ling and her husband wish to travel to Romania. As long as she is in possession of a valid passport and an EU family member's residence card, the latter country does not require her to have obtained of an entry visa. However, if she were to travel alone, she is required to have acquired such a document beforehand.

Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country and in possession of a family member's residence card?

The main rule is that third country nationals need to obtain an entry visa when entering the Netherlands. Article 8.9(1) of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*) creates an exception to this rule by removing the need to obtain an entry visa for third country family members that hold a valid family member's residence card from an EU/EEA country or Switzerland. The explanatory memorandum of the amendment decision of the Aliens Decree 2000 clarify that the provision refers to a family member's residence card in the sense of article 10 of Directive 2004/38.⁹⁸

⁹⁸ Stb 2006, 215, p. 33; accessible via <https://zoek.officielebekendmakingen.nl/stb-2006-215.pdf>

The exception only applies to family members covered by Article 8.7(2-4) Aliens Decree 2000. All three paragraphs only apply to third country family members who are accompanied by a family member that has the nationality of a country in the EU, the European Economic Area, or Switzerland, or when they join such a citizen in the Netherlands.

Article 8.7(2) Aliens Decree largely overlaps with the definition of ‘family member’ provided for in Article 2(2) Directive 2004/38. Article 2(2)(b) had to be implemented into the national legal order; the Netherlands has done so by defining ‘partner’ as ‘a person that has concluded a registered partnership which is valid according to Dutch international private law’. Article 8.7(3) Aliens Decree 2000 is an essentially the identical implementation of Article 3(2)(a) of Directive 2004/38. Article 8.7(4) Aliens Decree implements Article 3(2)(b) of Directive 2004/38. However, it not only applies to an unmarried partner with whom the union citizen has a durable relationship, but also to the direct descendants under the age of 18 of those partners, as long as they accompany or join the partner in the Netherlands.

Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country and in possession of a family member’s residence card, issued by the Member State where the family member is living with the EU national?

Third country family members who travel alone to the Netherlands will not be able to make use of the exception provided for in article 8.9(1) Aliens Decree 2000, unless they join a family member who is a citizen of the EU, EEA, or Switzerland in the Netherlands. Nevertheless, art. 8.9(1) Aliens Decree 2000 was used by a third country national before the Court of Appeals of The Hague as the basis for a right of residence. The case concerned a citizen of the Dominican Republic who had married a Dutch citizen in Spain, and had obtained a Spanish family member’s residence card. In 2011, he was declared an ‘unwelcome person’ after having been convicted for drug smuggling and assault. In 2013, he was jailed after having again travelled to the Netherlands, while his wife had stayed in Spain. The Court of Appeals dismissed his argument that Art. 8.9(1) Aliens Decree 2000 applied to him because he was married to a Dutch citizen, and ruled that his Spanish family member’s residence card did not confer a right of residence in the Netherlands on him.⁹⁹

⁹⁹ Court of Appeals the Hague, 20-05-2014, [ECLI:NL:GHDHA:2014:1696](#), par. 3, 6

Does your country require the possession of a family member residence card for third country national family members of EU nationals of another Member State travelling alone on domestic flights?

There are currently no commercial domestic flights in the Netherlands

Question 23 – Possible documentation-related obstacles suffered by TCN family members without residence cards

Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country, and not in possession of a family member's residence card?

There is no general legislative exception for the obligation to obtain an entry visa for third country family members who are not in possession of a family member's residence card. Therefore, unless they fall under some other exception, they will need to obtain an entry visa. Pursuant to Art. 5(2) of Directive 2004/38, Member States are required to implement a free and expedited visa procedure for such family members. This provision was only implemented in the form of a generally binding provision in 2012, though it was part of Dutch policy before that time.¹⁰⁰ Third country family members are granted a regular visa for short stay (*visum kort verblijf*); while the *Vreemdelingencirculaire* no longer states this explicitly,¹⁰¹ it is confirmed by the documents published by the Dutch Immigration and Naturalisation Service (*Immigratie en Naturalisatie Dienst*).¹⁰²

To make use of this procedure, family members must provide evidence that convincingly shows they are a family member in the sense of article 8.7(2-4) Aliens Decree 2000 (see the answer to Question 22). To that end, the Netherlands has published a list of evidence which will be regarded as sufficient proof of familial ties or a durable relationship.¹⁰³ The courts also take the three questions formulated in Commission Decision C(2010) 1620 into account.¹⁰⁴ If the third country family member

¹⁰⁰ Besluit van 2 april 2012 tot wijziging van het Vreemdelingenbesluit 2000, Stb. 2012, 159, p. 3. Accessible via: <https://zoek.officielebekendmakingen.nl/stb-2012-159.pdf>

¹⁰¹ This consideration (Vreemdelingencirculaire A2, par. 6.2.2.2) was removed during an efficiency oriented rewrite of Dutch policy, though this is not meant to have substantive effects; Besluit van de Staatssecretaris van Veiligheid en Justitie van 19 december 2012, nummer WBV 2012/25, houdende wijziging van de Vreemdelingencirculaire 2000, Stb. 2012, 26099, p. 173. Accessible via: <https://zoek.officielebekendmakingen.nl/stcrt-2012-26099.pdf>

¹⁰² Immigratie- en naturalisatiedienst, 'visum voor kort verblijf', <https://ind.nl/Documents/4022.pdf> p. 8;

¹⁰³ Vreemdelingencirculaire 2000, A1, article 4.10

¹⁰⁴ District Court the Hague, 13-11-2013, [ECLI:NL:RBDHA:2013:16102](https://eur-lex.europa.org/eli/other/2013/16102), par. 14

can prove article 8.9(2) Aliens Decree 2000 applies, an entry visa can only be refused on two grounds:¹⁰⁵

- If the family member is an actual and severe threat to a fundamental interest of society, or has an infectious disease.
- If there is evidence of abuse of law or fraud (such as a marriage of convenience)

The district court of The Hague has held that an airline ticket and a reservation at a hotel could be considered to be sufficient proof that a Moroccan woman and her Belgian partner intended to stay in Luxemburg. While the government had argued that such reservations are often cancelled after an entry visa is granted, and that a 90-day entry visa had been requested while the reservation was only for two weeks, the court considered this to be insufficient evidence of abuse of European law.¹⁰⁶

According to the preparatory memorandum, the decision in an expedited visa procedure must in principle be taken within 15 days; only by way of exception may the procedure take longer. In practice, according to the preparatory memorandum, the decision is taken as soon as possible, and within the 15 day limit.¹⁰⁷ In 2009, the District court of The Hague held that a decision given after 8 weeks could not be characterized as timely (as the Dutch government had also conceded).¹⁰⁸ In certain cases, the refusal to grant a visa can itself be contested before a court in an expedited procedure. For example, the District court of The Hague held that an Afghan man who had travelled to Dubai to submit his visa application was entitled to judicial review of the refusal decision before his Dubai visa expired, as he would otherwise have to make the “long, laborious, costly and sometimes dangerous journey” again.¹⁰⁹

It is apparent from the case law on art. 8.9 Aliens Decree 2000 that in some cases the Dutch government has imposed two additional requirements on the third country family members. These are, firstly, that there was a real and genuine residence by the EU citizen in the Netherlands, and secondly, that the accompaniment by the third country national was necessary for the EU citizen’s exercise of his free movement rights.¹¹⁰ These requirements are based on a judgement by the Dutch Council of State (Afdeling Bestuursrechtspraak Raad van State, the highest appellate court for certain administrative procedures), which concerned the refusal of a residence permit, and a judgment by the District court of Utrecht that considered this case law to be applicable

¹⁰⁵ Vreemdelingencirculaire 2000, A1, article 4.10

¹⁰⁶ District court the Hague, 07-10-2014, [ECLI:NL:RBDHA:2014:12374](#), par. 16-19

¹⁰⁷ Besluit van 2 april 2012 tot wijziging van het Vreemdelingenbesluit 2000, Stb. 2012, 159, p. 3.

Accessible via: <https://zoek.officielebekendmakingen.nl/stb-2012-159.pdf>

¹⁰⁸ District court The Hague, 18-06-2009, [ECLI:NL:RBSGR:2009:BJ4210](#), par. 2.17

¹⁰⁹ District court The Hague, 20-3-2013, [ECLI:NL:RBAMS:2013:1344](#) (published in JV 2013/193), par.

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¹¹⁰ Afdeling bestuursrechtspraak van de Raad van State, 30-12-2011, LJN: BV3581 (published in: JV 2012/98)

to third country family members requesting an entry visa.¹¹¹ Other courts have repeatedly annulled decisions imposing such requirements. For example, the District court of The Hague considered that the case law of the Council of State was not applicable, as it concerned a residence permit and the applicability of Directive 2004/38 after the Dutch citizen and the third country family member had returned to the Netherlands. It noted, moreover, that the District court of Utrecht had not motivated its decision to apply the reasoning in this case to situations like the one at hand.¹¹² In another judgment, the district court of The Hague considered the judgment of the Council of State to be inapplicable because it concerned a residence right under Art. 21(1) TFEU, as opposed to Directive 2004/28.¹¹³

Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country, and not in possession of a family member's residence card?

Like third country family members accompanying a citizen living in the Netherlands, third country family members who travel alone to the Netherlands will not be able to make use of the visa exception in article 8.9(1) Aliens Decree 2000 if they are not in possession of a family member's residence card. Those who join a Union citizen who is a family member in the Netherlands may be able to make use of the expedited visa procedure, in the same way as those who accompany such a citizen. However, in 2011 a District court held that a situation in which the third country family member would meet his Dutch partner in the Netherlands for a vacation in the Netherlands fell outside the scope of EU law. Therefore the court considered that the expedited visa procedure did not apply.¹¹⁴

Dutch courts have repeatedly emphasized that the third country family member's advantaged travel rights are dependent on their Union family members,¹¹⁵ and that the Directive and the legislative framework for the expedited visa procedure only apply to situations in which the third country family members accompany or join their family member who is an EU citizen.¹¹⁶ As such, it will not apply if they travel to an EU Member State alone, and if they are unable to prove that they will join their family member with EU citizenship in that Member State. Interestingly, even though the *Vreemdelingencirculaire* explains the evidence which will be required for showing a durable relationship or familial bond with some depth, neither the *Vreemdelingencirculaire* nor the Aliens Decree 2000 elaborate on the proof third

¹¹¹ District court Midden-Nederland, 26-03-2013, *Awb 12/35917*

¹¹² District court the Hague, 13-11-2013, [ECLI:NL:RBDHA:2013:16102](#), par. 15

¹¹³ District court the Hague, 07-10-2014, [ECLI:NL:RBDHA:2014:12374](#), par. 13

¹¹⁴ Rechtbank 's-Gravenhage zp Utrecht, 17-03-2011, AWB 09/33579, LJN BP9259, par 2.6-2.9

¹¹⁵ Rechtbank 's-Gravenhage zp Utrecht, 26-01-2011, AWB 10/26008, LJN BP4007, par. 2.19

¹¹⁶ Rechtbank 's-Gravenhage zp Utrecht, 17-03-2011, AWB 09/33579, LJN BP9259, par. 2.6

country family members need to show in order to substantiate their claim that they will join their EU family member.¹¹⁷ Moreover, the information brochure on the short visa published by the Immigration and Naturalisation Service, does not list either accompaniment or joining as an eligibility requirement for the expedited visa procedure.¹¹⁸ This peculiarity was also noted in a 2012 report on the free movement of workers in the Netherlands.¹¹⁹ Even though the websites of the Dutch embassies' in third countries state such proof must be presented when the visa application is handed in,¹²⁰ the visa applications on these websites do not further specify what evidence is required.¹²¹ Additional documents published by these embassies list, for example, a legalized invitation from the host (with proof of income, and a copy of the passport of the host) and proof of a relationship to the host (such as a family extract) as general requirements for a Schengen visa.¹²²

PART VI – ANY OTHER OBSTACLES

Question 24 – Other obstacles

Are there any other *de jure* or *de facto* obstacles in your country as regards the acquisition or use of travel documents not addressed in your responses to the previous questions?

(Again, the most interesting data for answering this final ‘catch-all’ question may perhaps be gleaned from diplomatic offices of other Member States in your country (or national complaint bodies such as Ombudsmen), or by contacting a selection of EU citizens to learn which specific other problems they have encountered.)

Several further issues are worth mentioning:

¹¹⁷ Vreemdelingencirculaire 4.10;

¹¹⁸ Immigratie- en naturalisatiedienst, ‘visum voor kort verblijf’, <https://ind.nl/Documents/4022.pdf> p. 8

¹¹⁹ P. Fernhout, C.A. Groenendijk, PP.E. Minderhoud & H. Oosterom-Staples. ‘REPORT on the Free Movement of Workers in the Netherlands in 2011-2012’, 2012 p. 29, accessible via: www.ru.nl/publish/pages/608499/netherlands_2011-12_def.pdf

¹²⁰ See, for example, <http://uae.nlembassy.org/shared/products-and-services/products-and-services/schengen-visa/uniform-visa-short-stay-visa/uniform-visa-short-stay-visa.html>

¹²¹ http://australia.nlembassy.org/binaries/content/assets/postenweb/a/australie/netherlands-missions/import/products_and_services/consular_services/visa/schengen-visa-application-form-and-information.pdf.

¹²² http://lebanon.nlembassy.org/appendices/products_and_services/consular_services/visa/schengen-visa-condition-list-visit.html; see also: <http://kenya.nlembassy.org/binaries/content/assets/postenweb/k/kenya/netherlands-embassy-in-airobi/import/visa-requirements.doc>

1. *The Law on the extensive duty to identify yourself (Wet op de uitgebreide identificatieplicht)*

In the Netherlands, there is a rather far-reaching law since 2005, which requires citizens from the age of 14 to be able to show an identity document, such as an original and valid passport, an identity card, or a driver's license, when they are asked to do so in certain situations by a police officer or other duly competent civil servant. If a person fails to do so, he or she risks a fine of 90 EUR (45 if the person is aged 14 or 15). Furthermore, there is a growing number of instances in which identification with a valid passport or identity card is required (driver's license being insufficient), such as in banks, tax authorities, applying for social assistance. The persons who have principled, moral objections to the current biometric passport, and who are therefore unable to obtain a valid travel document, are by and large risking both the fine of 90 EUR, and they are prevented from using the services that require identification with a passport or identity card. The Dutch Ombudsman has called attention to this problem in 2013, especially with a view to the growing concerns about the efficiency and security of the collection and retention of the biometric data.¹²³

2. *Proposal to amend the Passport Act in the light the prevention of terrorism*

A proposal has been introduced at the end of 2015, to amend the Passport Act in such a way as to include a specific possibility to request the immediate declaration of expiration (vervallenverklaring) of a travel document of persons who are subjected to executive measures to combat terrorism (which is subject to a separate and more broad legislative proposal 'Tijdelijke wet bestuurlijke maatregelen terrorismebestrijding'). The amendment would amount to a prohibition to exit the Dutch territory for persons who are reasonably suspected of wanting to join the foreign jihadist combat.

3. *Recent amendment of the Aliens Act 2000 – biometric data of aliens*

In 2013, the Aliens Act 2000 was amended to introduce the taking of fingerprints of all 10 fingers and a digital facial image into the entire "aliens chain" (vreemdelingenketen), so for asylum applications, visa applications and applications for a residence permit, and border controls. This requirement only applies to third country nationals. For aliens who have no other travel or identity documents, so-called rolled fingerprints shall be taken to facilitate the exchange of information within the European EURODAC system. The data will be stored in a central database.

¹²³ <https://www.nationaleombudsman.nl/nieuws/2013/ombudsman-voorziening-nodig-voor-principiele>



BEUCITIZEN
BARRIERS TOWARDS EU CITIZENSHIP

WP7: CIVIL RIGHTS

QUESTIONNAIRE'S ANSWERS

Italy

Case-Study 7.6 "Access to Travel Documents"

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Version 1.0: 30 December 2015



Grant Agreement Number 320294
SSH.2012.1-1

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PART I – TYPOLOGY AND FORMAT

Question 1 – Typology

- ✓ Which are the main types of travel documents that are in common usage in your country?

The Italian Republic issues the following documents that are usually used as travel documents:

- Passport
- Identity card
- Visa
- Driving licence³
- Residence-related document

Italy may issue different types of passports, which are documents to be used both for travel and for identification reasons, and namely:

- a) Ordinary Passport: 48-page booklet;
- b) Temporary Passport: 16-page booklet;

c) Group Passport: issued exclusively by the Italian Police (*Questura*) for cultural, religious, sport and tourism purposes or others according to international agreements. This document allows for the expatriation for purposes of travel only, of groups of from 5 to 50.

According to Law no. 1185 of 1967 (the so-called Passport Law): “The passport is valid for all States which Governments are recognised by the Italian Government, except restrictions foreseen by this law. Upon request of the interested person, the

³ This document is not considered by this questionnaire.



passport may be valid, through specification of the destination locality, for States the Governments of which are not recognised”.

The Italian legal system acknowledges other travel documents as equivalent to a passport. These documents are mostly linked to international agreements and/pr to specific legal status of the owner. The following equivalent documents may be mentioned⁴:

- an identity card in the case of nationals of EU Member States which is valid for foreign travel for work purposes, and exempt from the visa requirement;
- an identity card (and other documents) identifying citizens of the signatory States of the “European Agreement on the Abolition of Passports” (signed in Paris on 13 December 1957), valid for the purposes of tourism in any one of the States for a period of not more than three months. It is exempt from the visa requirement;
- a list of participants in school trips within the EU, issued to students from third countries resident in an EU state in conformity with the "Joint Action" of the Council adopted by the European Union on 30 November 1994. This document is exempt from visa requirements.
- a pass, replacing a passport issued to a person who does not hold a regular travel document, authorising the holder to travel throughout the Schengen area, or only within Italy. This document is subject to the visa requirements to which the person’s country of origin is subject;
- clearance papers or border permits granted to citizens residing in border areas, for transit across the border itself and circulation in the corresponding areas of neighbouring States. This document is exempt from visa requirements.
- travel documents for stateless persons, governed by the “Convention Relating to the Status of Stateless Persons” signed in New York on 28 September 1954: stateless persons must obtain a visa for Italy unless they already hold a residence permit to sojourn in one of the Schengen countries;

⁴ See the website of the Italian Ministry of Foreign Affairs: <http://www.esteri.it/mae/en>



- travel documents for refugees, governed by the “Convention Relating to the Status of Refugees”, signed in Geneva on 28 July 1951. Refugees must obtain a visa unless they already hold a sojourn permit in one of the Schengen countries or a travel document issued by one of the signatory States of the Strasbourg Agreement of 20 April 1959);
- travel documents for aliens unable to obtain a valid travel document from the authorities of the country of which they are nationals; these documents are subject to the same visa requirements which apply to nationals of their home country;
- the Seafarer's Identity Document issued to seafarers to exercise their profession, recognised as a valid travel document to enter the Schengen Area only in relation to the seafarer's professional requirements, and for no any other reason. Italy recognises the Seafarer's Identity Documents issued by EU countries and the EEA countries signatories to the International Labour Convention No 108 (Geneva, 13 May 1958) and by those with which Italy has concluded specific bilateral agreements;
- the General Declaration, issued to pilots and crew of Civil Aviation companies for flight duty, in conformity with the “Convention on Civil Aviation” signed in Montreal on 7 December 1944. This document is exempt from visa requirements in the signatory countries of the Chicago Convention of 2 March 1949 or under reciprocity agreements, provided that the entry is work-related;
- the United Nations laissez-passer, issued by the United Nations Secretariat to United Nations personnel and that of its related agencies, in conformity with the “Convention on the Privileges and Immunities of the Specialized Agencies” adopted by the UN General Assembly in New York on 21 November 1947. Persons holding this document are exempt from the visa requirement for short stays (no more than 90 days).
- an individual or collective movement order issued by NATO Headquarters to military or civilian personnel and their dependents (spouse and children) serving in a NATO member country, in conformity with the “Agreement between the Parties to the North Atlantic Treaty” signed in London on 19 June 51 and ratified by Italy with



Law no. 1335/1955. The members of a NATO force (but not accompanying civilians or dependent family members) are exempt from the visa requirement;

The Identity card is a document ordinarily used for identity purposes but that can be used as a travel document within the Schengen area. In some Italian autonomous regions, where a constitutionally protected national minority coexists with the majority, this document is issued in a bilingual form and in a colour different from the ordinary one.

In the Province of Bolzano/Bozen (*Alto Adige/Südtirol*) the ID card is green and written in Italian and German (i.e. the two co-official languages within that Province); similarly in the autonomous Region Valle d'Aosta/Vallé d'Aoste the ID card is written in both official languages, Italian and French, and the colour is blue. In the provinces of Trieste, Gorizia and Udine a bilingual ID card (i.e. written in Italian and Slovenian) may be issued upon request.

According to Art. 7-bis of Law no. 43 of 31 March 2005 (which introduced the electronic passports, visa and residence permits starting from the 1st January 2006), electronic identity cards may also be issued but not outside of Italy.

Question 2 – Domestic follow-up rules to the main EU instrument

✓ Were any specific measures enacted in your country to give further effect to the main EU instrument regulating travel documents, i.e. Regulation 2552/2004/EC?

If so, please identify the relevant act(s)/law(s) and describe their location within the domestic legal hierarchy.

According to the principles of precedence and direct effect of European law, the EU Regulation is directly applicable in the Italian legal system. Nonetheless the Italian Parliament passed some acts giving further effect to some EU instruments, especially as regards procedures and technical features.



From a chronological perspective the following measures may be mentioned:

- the already mentioned Law no. 43 of 31 March 2005;
- Ministerial decree (*decreto ministeriale*) of 29 November 2005 on electronic passport ;
- Ministerial Decree of 31 March 2006 on the electronic passport (Disposizioni sul passaporto elettronico);
- Ministerial Decree of 9 May 2006 on electronic passport fees (Importo delle spese da porre a carico dei soggetti richiedenti il passaporto elettronico);
- Ministerial Decree of 18 October 2006⁵;
- Ministerial decree no. 303/014 of 23 June 2009 on rules concerning the model and the security features of the normal e-passport⁶;
- Law no. 166 of 20 November 2009 converting legislative decree no. 135 of 25 September 2009 on compelling measures for the implementation of EU obligations and ECJ decisions⁷. In particular, this law gave implementation to Regulation no. 444/2009/EC imposing also in the Italian legal system the principle of the individual passport for each citizen. Consequently, also minors must have a passport instead of the mere inclusion in the parents' passport.

Indeed Art. 23ter of this law modified Art. 14 of law no.1185 of 21 November 1967, making the individual passport for minors mandatory. The act also modified Art. 17 of the mentioned law, regulating the validity of the passport according to the differences in the age of the owners⁸;

⁵ In Italian: Decreto Ministeriale 18 ottobre 2006 “Passaporto di servizio a lettura ottica elettronico, nelle tipologie di passaporto di servizio, passaporto di servizio – funzionario internazionale e passaporto di servizio - corriere diplomatico”.

⁶ In Italian: Decreto ministeriale 23 giugno 2009 n. 303/014. Disposizioni relative al modello e alle caratteristiche di sicurezza del passaporto ordinario elettronico.

⁷ In Italian: Legge 20 novembre 2009, n. 166. Conversione in legge, con modificazioni, del decreto-legge 25 settembre 2009, n. 135, recante disposizioni urgenti per l'attuazione di obblighi comunitari e per l'esecuzione di sentenze della Corte di giustizia delle Comunità europee. (Art. 20 ter).

⁸ As to the passport for minors and the validity of Italian passport see below.



- Law no. 1185/1967 is the Italian law on passports⁹, which has been modified also by law no. 3 of 16 January 2003 regulation the public administration as to minors and passports' validity;
- Ministerial Decree no. 303/14 of 23 March 2010 on electronic passports, including rules on temporary passports¹⁰;
- Legislative Decree no. 71 of 3 February 2011 concerning the organization and functioning of consular offices, which as we will see are authorities in charge of issuing Italian passports abroad¹¹.

With reference to the Italian legal hierarchy, laws and legislative decrees are primary sources of law (*fonti del diritto di rango primario*). As to their legal force and binding character, the law is a statutory act issued by the Parliament, subject to the Constitution but prevailing on the other domestic sources of law. The legislative decree is an act issued by the Government on the basis of a statutory law (so-called "*legge delega*" in Italian) in which the Parliament defines the principles and legislative criteria the decree has to comply with. Legislative decrees have therefore the same legal force of the law (*atti aventi forza di legge*).

Indeed according to Art. 76 of the Italian Constitution "the exercise of the legislative function may not be delegated to the Government unless principles and criteria have been established and then only for a limited time and for specified purposes".

Ministerial decrees are instead secondary sources of law ("*fonti di rango secondario*"), meaning regulations aiming at specifying or implementing statutory acts, which may be issued by a single Ministry only if the related power is specifically provided for by a law. From the legal hierarchy perspective, these acts are subject to

⁹ In Italian: legge 21 Novembre 1967 n. 1185. Norme sui passaporti (modificata dalla legge 16 gennaio 2003, n. 3 e dal Decreto-legge 25 settembre 2009, n. 135, convertito in Legge 20 novembre 2009, n. 166).

¹⁰ In Italian: Decreto ministeriale 23 marzo 2010, n. 303/14. Disposizioni relative ai libretti di passaporto temporaneo.

¹¹ In Italian: Decreto Legislativo 3 febbraio 2011, n. 71 – Ordinamento e funzioni degli Uffici consolari.



the law and to other sources having the same force of the law (i.e. legislative decree and decree-law¹², issued by the Government).

Question 3 – Conformity with applicable standards and requirements

✓ Please verify whether the standards and requirements for (issuing) passports and travel documents adhered to in your country comply with those prescribed in Regulation 2552/2004/EC, including the requirements and pointers contained in its Annex.

In particular:

- Do the standards and requirements imposed refer to the mandatory inclusion of fingerprints in an interoperable format?
- Did your Member State designate a specific body for printing passports and travel documents? Please check whether that name was subsequently communicated to the Commission, and also indicate if the same body was designated by another Member State.
- Have the technical specifications referred to in Article 2 of the Regulation been published, or are they (in line with Article 3) kept confidential?
- Have the biometric features prescribed by the Regulation been integrally introduced for the passports and travel documents issued in your country?

(Note that, in line with Article 1(3) of the Regulation, this question does not pertain to identity cards issued by Member States to their nationals, or to temporary passports and travel documents having a validity of 12 months or less.)

Starting from 2006, in compliance with the mentioned EU Regulation, the ordinary Italian passport is an electronic document which replaced all previous models.

Since 2010 it consists of 48 pages and uses advanced technologies such as an anti-counterfeit stamp and a microprocessor chip containing the personal data of the owner, as well as of the authority that issued it. These technologies give it a high degree of security. All Italian passports include fingerprints in an interoperable format.

¹² According to the Italian Constitution (Art. 77), these decrees may be issued by the Government in case of necessity and urgency and must be converted into law by the Italian Parliament within sixty days: “The Government may not, without an enabling act from the Houses, issue a decree having force of law. When the Government, in case of necessity and urgency, adopts under its own responsibility a temporary measure, it shall introduce such measure to Parliament for transposition into law. During dissolution, Parliament shall be convened within five days of such introduction. Such a measure shall lose effect from the beginning if it is not transposed into law by Parliament within sixty days of its publication. Parliament may regulate the legal relations arisen from the rejected measure”. For a general overview of the Italian legal hierarchy of sources of law see, among others, R. Bin, G. Pitruzzella, *Diritto costituzionale*, Torino, 2015.



In Italy, the biometric features prescribed by the EU Regulation, which imposes the minimum security standards, have been integrally introduced for passports. Indeed, as expressly stated by the above mentioned ministerial decree of 2009 Italian biometric passports comply with European and International standards and features¹³.

Additional technical specifications referred to in Article 2 of the Regulation are kept confidential in line with Art. 3 of the same act¹⁴.

The body specifically designated by Italy for printing passports is the so-called “*Istituto Poligrafico e Zecca dello Stato*” (*State Mint and Polygraphic Institute*)¹⁵.

Question 4 – Validity

- ✓ What is the general period of validity of (the different types of) travel documents that are in common usage in your country?
- ✓ Is prior (individual) warning issued to the bearer with regard to imminent expiry, and the need to renew the document(s) in question (e.g. via letter or e-mail notice)?

As to identity card, the period of validity varies according to the age of its bearer:

- 3 years for minors up to the age of 3;
- 5 years for minors between the ages of 3 and 18;
- 10 years for all those over the age of 18.

According to Law no. 133/2008, converting Legislative decree no. 112 of 25 June 2008 the 10-year validity of a card valid on 26 June 2008 has been extended by an additional 5 years.

¹³ See in particular Art. 2 of the Ministerial Decree of 2009 no. 303/014 on the sources of law and EU documents on which the Italian framework for electronic passports is based. See also Artt. 5 and 6 of the same act on technical and safety features.

¹⁴ For a more detailed analysis of the securities standards for e-passports in Italy see the website of the body in charge for their printing:
http://www.ipzs.it/ext/passaporto_eletronico.html

¹⁵ *Istituto Poligrafico e Zecca dello Stato* website: <http://www.ipzs.it/ext/index.html>



Also with reference to ordinary passports the period of validity depends on the age of the bearer, and as already said, since 26 June 2012 all Italian minors travelling abroad must have their own individual passports.

These are the periods of validity:

- minors of up to 3 years of age: 3 years;
- minors of from 3 to 18 years of age: 5 years;
- anyone over the age of 18: 10 years.

As we will see below expired passports can no longer be renewed (i.e. a new passport must be issued).

In Italy, temporary passports have a potential validity of up to one year, whereas a Group Passport is valid for a maximum of 4 months from the date of issuance.

An Emergency Travel Document (ETD) is valid only for return of the Italian nationals to Italy or to the country in which they legally reside. Only in exceptional cases can it be used for a different destination.

With reference to VISA, from 5 April 2010 Transit visas¹⁶ are all type C.

Short-stay or so-called travel visas (type C) are valid for up to 90 days, for single or multiple entry¹⁷.

For long-stay or "national" Visas (NV) with one or more entries, in the territory of the Schengen State whose diplomatic mission issued the visa, the period of validity exceeds 90 days.

As to the imminent expiry and the need to renew the Identity Card, in Italy the municipality (*Comune*) issues a prior individual warning to the bearer.

¹⁶ See above.

¹⁷ In exceptional cases, under the Schengen regulation important or well-known persons who frequently require a visa and who can provide the necessary guarantees may be enabled to require a type C visas which permit a visit of up to 90 days in any half-year and are valid for one (C1), two (C2), three (C3) or five years (C5).



No prior warning is instead issued for passports





PART II – ACQUISITION, RENEWAL AND LOSS

Question 5 – Venue, costs and timeframe

- ✓ At which office in your country are travel documents ordinarily to be obtained? Please include in your answer details on whether or not an application can be made digitally (even when the documents still have to be picked up in person).
- ✓ Which costs are associated with the acquisition of the different types of travel documents issued in your country? Please distinguish between the various categories, where appropriate, and convert any sums in other currencies, where applicable, to EUR.
- ✓ What is the standard timeframe for delivery (i.e. between formal application and actual obtaining of the document in question)? Please also indicate if special limitations apply in case of urgency, and what additional costs (if any) are incurred in such cases.

In Italy Identity Cards are ordinarily to be obtained at the Register Office (*Anagrafe*) of the Municipality (*Comune*) of residence and, starting from 2007, also at properly equipped consular offices¹⁸. These offices can issue paper format identity cards exclusively to Italian citizens legally residing in their consular jurisdiction and registered with the consulate. The personal data of these citizens must be listed in the database of the A.I.R.E. (*Anagrafe degli Italiani Residenti all'Estero*) of the Italian Ministry of the Interior. It must be stressed that currently only the Italian consulates in the European Union countries and Switzerland, Norway, Principality of Monaco, San Marino and the Holy See/Vatican City can issue Italian ID cards¹⁹. The fee is the same provided for nationals resident in Italy.

As already said, electronic identity cards may not be issued outside of Italy.

Moreover Italian Identity cards are not issued immediately on the place, since their issuance is subject to clearance by the Italian municipality of AIRE Registration.

It is also possible to request an identity card in Italy from the municipality of AIRE Registration.

¹⁸ Starting from the 1st June 2007, pursuant to §1319 of Law no. 296 of 27 December 2006 which authorised consulates to issue and renew ID cards to Italian citizens registered in the AIRE: *“A decorrere dal 1o giugno 2007, gli uffici consolari sono autorizzati a rilasciare e a rinnovare la carta d'identità a favore dei cittadini italiani residenti all'estero ed iscritti al registro dell'AIRE. Il costo per il rilascio e il rinnovo della carta d'identità è fissato in misura identica a quello previsto per i cittadini italiani residenti in Italia”*.

¹⁹ See the websites of the Ministry of Foreign Affairs (http://www.esteri.it/mae/it/italiani_nel_mondo/serviziconsolari/documenti_di_viaggio/) and of the State Police (<http://www.poliziadistato.it/articolo/view/24725/>).



Applications can be submitted directly to the local authorised consular office or by mail.

With reference to the application, the following documents must be submitted:

- identity card application form, completed and signed by the applicant;
- valid identification document (as ruled by DPR 445/2000);
- 4 recent and identical colour passport-size photos.
- receipt for payment of fees;
- if the applicant is under the age of 18, written statement of consent of both parents;
- if the applicant has children under the age of 18, written statement of consent to issuance of the passport of the other parent²⁰;
- If the applicant is under the age of 18 and foreign-born, it is necessary to submit the child's birth certificate. In this case the certificate must be translated and legalized to the authorized consulate. In some cases a multilingual format certificate can be required.

Since the authorised official will need to identify the applicant, identity cards must be collected in person. The applicant must also sign the card in the presence of the official.

In Italy, the passport is issued by the Italian Police (*Questura*) in Italy and by diplomatic-consular missions abroad.

Pursuant to Article 5 of the Passport Law: "the passport is issued , renewed, [...] by the Ministry of Foreign Affairs and upon its delegation a) in Italy by the

²⁰ This prerequisite has to be met regardless of applicant's civil status (single, married, separated or divorced), according to the principle of equality stressed also by the Italian Constitutional Court (e.g. decision no. 464 of 1997).



questori and, in exceptional cases, by borders Inspectors fro Italians leaving abroad;
b) abroad: by the diplomatic and consular representations”.

As a rule²¹, passport applications are submitted to the local authorities competent for the applicant’s place of residence, in Italy and abroad.

For the issuance of ordinary passport the following documents are to be submitted:

- passport application form, completed and signed by the applicant;
- display of valid identification document, in compliance with D.P.R. 445/2000;
- 2 recent photographs (identical, face-front, colour, 35 x 40 mm);
- receipt for payment of fee and related government tax for use of passport, except in cases of exemption, as stated in art. 19 of Law no. 1185/1967²²;
- if the applicant has children under the age of 18, written statement of consent to issuance of the passport of the other parent²³;
- if the applicant is under the age of 18, written statement of consent of both parents;
- if the applicant is under the age of 18 and foreign-born, it is necessary to submit the child’s birth certificate. Also this case the certificate must be translated and legalized to the authorized consulate. A multilingual format certificate may also be required.

The written statement of consent can be submitted by using a special form made available by the passport office, but parents may write their own document. The statement must be submitted along with a photocopy of the identity document

²¹ For exceptions see below. In any case fingerprints can be taken only by the Police.

²² See below.

²³ This prerequisite has to be met regardless of applicant’s civil status (single, married, separated or divorced), according to the principle of equality also stressed by the Italian Constitutional Court (see below).



of the parents. In this context it is worth noting that the signature of a non-EU citizen must also be authenticated by the office in charge.

With reference to venues, procedures and related costs, it must be underlined that starting from 2006 on the basis of an agreement between “*Poste Italiane*” (i.e. the national postal service) and the Italian Ministry of Foreign Affairs, also postal offices may receive application forms for the issuance of the passport. They will then forward the application to the *Questura* and the passport may be sent to the applicant. The fee for this service is 20,00 Euro²⁴.

On 27 October 2014 “*Poste Italiane*” and the Department of Public Security (*Dipartimento della Pubblica Sicurezza*) signed an agreement permitting the delivery of the passport directly to the domicile of the applicant. The cost of the service is 8,20 Euro.

In December 2010 the so-called “*Agenda Passaporto*” has been introduced, which allows online application (for free) by registering on the website of the State Police and fulfilling the online form²⁵.

As to group passports, they are exclusively issued by the Italian Police in Italy (*Questura*). Applications can be made by the group leader with a valid passport.

With reference to ETDs, they are issued by the locally authorised Consulate. Honorary Consulates are not authorized to issue them. Moreover, they are limited to forwarding applications to the authorized Consulate and acting as the agent of their final delivery to the applicant. The latter has also to bear eventual mailing costs.

The following documents are needed:

- Report of the loss or theft of your passport or other travel document to the Consulate as per articles no. 46, 47 and 76 of Presidential Decree 445/2000;
- 2 identical, front-face, colour 35 x 40 mm photographs;

²⁴ In any cases only police offices can take fingerprinting. The applicant is therefore obliged to go to this venue for the fingerprinting.

²⁵ Information and online application are available at the State Police website: <https://www.passaportonline.poliziadistato.it/>



- Ticket;
- Receipt for payment of the fee for the document (currently €1.55) and eventual mailing costs if the person concerned is not able to pick it up in person.

Visas are issued by the diplomatic or consular missions with territorial jurisdiction over the place of residence of the applicant.

Authority over visas to enter the Italian Republic is vested in the Italian Ministry of Foreign Affairs and its network of accredited diplomatic and consular offices. These authorities are in charge for ascertaining that applicants met the prerequisites entitling them to obtain a visa.

The authority issuing Uniform Schengen Visa (transit or short stay) is the locally present diplomatic office of the Schengen Member State, which is intended to be the sole or main destination. In case of several stop-over in the journey, when it is not possible to identify the main destination, the visa shall be issued by the diplomatic office of the Schengen State of entry.

The authority issuing a National Visa (long stay) is the diplomatic mission of the Schengen State locally present in the place intended to be the long sojourn destination.

If the Member State competent in issuing the visa does not have a mission in the alien's country of residence, the Uniform Schengen Visa can be issued by the Mission of another member State on its behalf. National Visas may not, however, be issued by delegated authority.

Visa applications must be submitted in writing, and must fulfil all the details required on the special application form which must be signed by the applicant. One passport-size photograph is also needed.

Since they have to be interviewed on the reasons and circumstances of the visit, aliens applying for visa must, as a rule, personally go to the diplomatic or consular offices.



Moreover, a valid travel document on which it is materially possible to attach the visa must be joint to the application.

From a general perspective, the documents that may be required (depending on the type of visa requested) must state:

- the purpose of the visit;
- means of transport and return;
- means of support during travel and stay;
- accommodation arrangements.

The fees for the ID card are:

- € 5.61 for first issuance or renewal;
- € 10.77 for duplicates in cases of loss or theft.

The fee for an ordinary passport is € 42.50. In June 2014 an administrative charge of €73.50 has been added. Accordingly, starting from the 24th of June 2014, pursuant to Article 5-bis of Decree Law (“*decreto legge*” in Italian) no. 66/2014²⁶ the issuance tax is no longer due, as well as the annual government tax for the years following the first, in the case of the passport’s use for travel in non-EU countries. Therefore the €73.50 fee is valid until the document’s expiration. The same applies to the issuance of temporary or groups passports.

According to the law concerning the consular offices, outside Italy this reform went into effect on 8 July 2014.

Passports are issued free of charge in the following cases:

- the applicant is considered an emigrant under T.U. 13.11.1919, n. 2205 (converted into Law no. 473/1925). According to Article 10 “considered an emigrant, for emigration laws and regulations, is any citizen who expatriates for reasons

²⁶Decree no. 66 of 24 April 2014, transposed into law in June 2014 (by Law no. 89 of 23 June 2014).



exclusively of manual labour or small business, or to join a spouse, ancestors, siblings, aunts/uncles, cousins and grandchildren of the same degree who have already emigrated for the same reasons, or who returns to a foreign country where he/she has previously emigrated under the conditions described by the article”;

- Italians residing abroad repatriating to serve in the military;
- Italian applicants who can prove indigence (it is worth noting that the indigence threshold is specific to each country);
- persons belonging to a religious order or missionaries. In this case the declaration of the order’s superior, on letterhead paper with government tax stamp, attesting to the fact and indicating the person’s address is required.

The current fee for the temporary passport is €5.20, in addition to the mentioned issuance tax.

The cost for a Group Passport is € 5.50.

As to ETD, the fee is currently €1.55. Mailing costs may be added if the person concerned is not able to pick it up in person.

As to the timeframe for delivery, from two days to 2 weeks can pass between formal application and actual obtaining of the passport. Nonetheless in some cases the document can be delivered immediately.

The Identity card is usually delivered immediately, except when its issuance is subject to clearance by the Italian municipality of AIRE Registration.

The terms for issuance of a Schengen visa are listed in art. 23 of the Visa Code: 15 days, which may be extended to 60 in specific cases.

As regards national visas, the timeframe for their issuance is set out in section 5 (8) of Presidential Decree (“*Decreto del Presidente della Repubblica*”, hereinafter DPR) no. 394 of 31 August 1999, as amended by D.P.R. 334/2004, according to which the diplomatic or consular mission, “after ascertaining that the application can be entertained, and after conducting the necessary investigations in relation to the visa,



including the preventive security checks, shall issue the visa within 90 days of the date of application” (30 days for paid employment, 120 days for self-employment).

According to article 6.2 and 6.3 of Ministerial Decree no. 171 of 3 March 1997, these terms may be exceeded whenever it is necessary to carry out investigations or obtain information, documents and opinions from foreign authorities.

Question 6 – Deviations in case of renewal or loss

- ✓ Does a different procedure apply in case of an application for renewal of an earlier document, rather than a first-time acquisition? If so, please highlight the specific deviations, and also indicate whether a reduced tariff is applicable in such cases.
- ✓ Does a different procedure apply in case of an application due to loss of a previous document, rather than a first-time acquisition? If so, please highlight the specific deviations, and indicate whether a surcharge imposed for such cases.

As to Identity Card renewal, it must first of all be underlined that according to Law no. 133/2008, converting Legislative decree no. 112 of 25 June 2008 the 10-year validity of a card valid on 26 June 2008 has been extended by an additional 5 years by an extension stamp or by a certificate in case of electronic cards. Nevertheless problems arise repeatedly from some countries’ refusal to recognise identity cards with the validity extension through the stamp for expatriation purposes. Consequently, according to Circular no. 23 of 28 July 2010 issued by the Italian Ministry of the Interior, those persons in possession of identity cards renewed by extension may request new ones. The new 10-year validity of them begins with the issuance of the new document. The procedure to be followed for ID cards’ renewal is the ordinary one.

With reference to passport renewal it must be considered that in Italy expired passport can no longer be renewed. It means that a new passport must be issued following the ordinary procedure.



Also as to full passport, meaning the case where a person has filled all the pages of its current document with visas and therefore intends to apply for a new passport, the same procedure as for an ordinary passport must be followed.

In cases of ID card loss or theft it is necessary to report it to the competent public security authority (either the Police or “*Carabinieri*”). Consequently as to the procedure to be followed for an application due to loss or theft, the a copy of the report (“*denuncia*” in Italian) must be added to the other documents ordinarily required for a first-time acquisition and to the specific form to be fulfilled at the competent venue for the delivery of the document.

As already stated for the full or expired passports, in cases of passport loss or theft it is not possible to deliver a duplicate of it. It means that the citizen must apply for a new passport.

In all these cases the ordinary documentation as for the first-time delivery is needed, included the fee of € 73,50, as well as, whenever necessary, the various models for parents’ consent.

It must be underlined that in cases of loss or theft the report to the competent public security authorities is necessary, and must be then added to the application.

If a new passport is asked on grounds of its deterioration, the old document must be returned. It will annulled and given back together with the new one. Should some visas be still valid on the old passport, they can be shown at the borders.

The application must be submitted to the Police (*Questura*), to the police commissioner's office (*Commissariato di Pubblica sicurezza*), to the “*Carabinieri*” or to the municipality (and recently also to the post offices). Nevertheless fingerprints can be acquired only by the Police (also after the submission of the application).



Question 7 – Grounds for withdrawal

- ✓ On which grounds are public authorities in your Member States entitled to withdraw a person's passport?
- ✓ Are these grounds for withdrawal considered compatible with the substantive and procedural requirements imposed by Articles 27 and following (public policy, public security, public health, access to judicial remedies etc.) of Directive 2004/38/EC?

(Note that this question does not pertain to withdrawal of nationality, which is a different matter, and that ID cards normally cannot be withdrawn.)

In Italy the passport can be withdrawn under the same circumstances that would have prevented its issuance, pursuant to Art. 3 of Law no. 1185/67. From a general perspective, according to the Italian legal system there are two main groups of circumstances that may hinder the issuance of the passport (and therefore cause its withdrawal), and namely:

- cases where there is the need to protect minors, interdicted persons or more generally persons whose care is entrusted to other people;
- cases where the expatriation of criminally convicted persons must be prevented.

The passport may be denied or withdrawn, for instance, to a parent of a minor that does not have the consent of the other parent or the authorization by the judge. The same applies to persons concerned by an arrest warrant or subject to a custodial sentence or to a custodial security measure. The validity of a passport may be suspended with reference to certain war zones.

Originally the issuance of the passport was limited also on the basis of obligations connected to the national military service. This need has been reformed according to the abolition of the mandatory military service in 2004 (starting from 2005)²⁷.

According to Article 12 of the same Act the passport may be revoked in the following cases:

²⁷ Law no. 226 of 23 August 2004.



- “when its bearer abroad is unable to give evidence of compliance with alimony obligations deriving from decisions by judiciary authorities or from the request of minor or disabled descendants, ancestors or spouse not legally separated;
- when its bearer is a minor who engages abroad in acts that are immoral, dangerous or harmful to health”²⁸.

As to visas, it should also be underlined that an alien cannot be considered as having a general “right” to obtain a visa but rather a simple “legitimate interest”²⁹. Denials must however be justified and communicated to the applicant in a language he/she may understand or at least in one of the following languages: English, French, Spanish or Arabic. In cases of denials applicants may lodge a claim with the Regional Administrative Court of Lazio (*Tribunale Amministrativo Regionale*, T.A.R.), within 60 days from the notification of the denial. If the visa denied is needed to join or accompany family members, claims can instead be made to the ordinary courts. The Government Legal Service must be notified.

²⁸ Art. 12 of the Passport Act. The translation is taken from the website of the Italian Ministry of Foreign Affairs (revocation of passport): http://www.esteri.it/mae/en/italiani_nel_mondo/serviziconsolari/documenti_di_viaggio/pasaporto.html

²⁹ See the website of the Italian Ministry of Foreign Affairs: http://www.esteri.it/mae/it/ministero/servizi/stranieri/ingressosoggiornoinitalia/visto_ingresso/diniego_visto.html

It means that the person has an interest indirectly protected by the law as coincident with a general public interest that the law protects by regulating the functioning of the public administration. The distinction between “rights” and “legitimate interests” is a specific feature of the Italian legal system. For a general overview see, for instance, G. Falcon, *Lezioni di diritto amministrativo*, Padova, 2013; G. Corso, *Manuale di diritto amministrativo*, Torino, 2015; A. Travi, *Lezioni di giustizia amministrativa*, Torino, 2014; A. Sandulli (ed.), *Diritto processuale amministrativo*, Milano, 2013.



Question 8 – Acquisition by non-nationals at public offices

- ✓ Which types of travel documents, if any, can be obtained at public offices in your Member State by nationals of other Member States?
- ✓ If nationals of other Member States can indeed obtain such documents at public offices in your Member State, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)
- ✓ With regard to the applicable procedure, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. longer/shorter timeframes)
- ✓ With regard to the associated costs, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. surcharges)
- ✓ Is it mandatory for long-term residing EU citizens to have registered their presence with the relevant authorities beforehand (in line with Article 8(1) of Directive 2004/38/EC, if implemented in your Member State) before they are able to apply for said documents?
- ✓ Is information on the acquisition of the relevant travel documents adequately made available in (at least the main) other EU languages?

As to the acquisition of travel documents by non-nationals, considering that the Italian passport can be issued only to Italian citizens, nationals of other Member State may obtain only an ID card if they are resident in a given Italian Municipality (i.e. the authority in charge of the issuance of Italian ID cards). In this case there are no general differences with regard to the applicable procedure, nor to costs, as far as EU citizen are concerned. The only document to be added is a valid identity document.

For non-EU citizens and stateless persons instead also the original copy of the valid residence permit is required.

If the resident permit has expired a copy of it must be provided together with the original receipt of the renewal application submitted before the expiry date of the residence permit or within 60 days from its expiration.

Nonetheless it must be stressed that ID cards for non-nationals (both EU and non-EU nationals) although completely valid on the Italian territory are not valid for expatriation.

Pursuant to the Italian legal system, according to the length of his/her stay, a EU citizen or his/her family member, may go to a police office in order to declare his/her presence in the national territory. The registration is in any case required



after three months from the date of arrival and a registration certificate is issued immediately. In this case to be resident a long-term residing EU citizen has to registered his/her presence with the relevant authorities before applying for an Italian document.

As to the acquisition of information concerning relevant travel documents, most institutional websites are translated in English and in certain cases also in French, German and Spanish. Nonetheless the adequate availability of all relevant information at least in the main EU languages still needs to be strongly improved.

Question 9 – Policy for extension and renewal in consular representations in other Member States

- ✓ Does your Member State adhere to a uniform general policy with regard to the extension or renewal of travel documents at its consular representations abroad, or do the conditions and procedures applied differ per country?
- ✓ Compared to nationals resident in your own country, do any additional conditions and requirements apply at your Member State's consular representations in other countries, when nationals resident in those other countries seek to obtain or renew travel documents?
- ✓ Are reduced rates applicable for specific categories of persons (e.g. costs waived for recipients of social benefits)?
- ✓ Which information and certificates are nationals of your own country expected to adduce at consular representations in other EU Member States when they there wish to apply for travel documents for a newborn child?
- ✓ Are authenticated translations required, or are the original copies, accompanied by informal transcripts, considered as equivalent and acceptable for the issuing of such travel documents?

From a general perspective, in the Italian legal system consular representations and consular services, including the issuance of travel documents adhere to an uniform general regulation pursuant to the above mentioned Legislative decree no. 71 of 2011 on consular offices and their functions (*“Ordinamento e funzioni degli ufficio consolari”*). Documents to be submitted, conditions and timeframe are therefore generally the same. Also fees are the same according to the rules governing consular tariffs and must be paid in the currency of the State in which the Italian consular office has place.



Administrative and organizational issues may instead change according to local polices, such as, for instance, the system to make an appointment or the use of the Consular website.

It must also be underlined that with reference to the consent of the parents needed for minors' passports, if one of the parent is neither an Italian nor an EU citizen, the Italian regulation for self-certification (*autocertificazione*³⁰) does not apply. Further procedures are needed especially outside EU Member States, such as the presence of the parent with a valid identity document or a notary act³¹.

As a rule consular offices can issue passports to Italian citizens who are either residing within their constituency, or formally registered with the A.I.R.E. (*Anagrafe Italiani Residenti all'Estero*, meaning: *Registered Italians living abroad*).

The applicant must go personally to the Italian Consulate to have fingerprints taken. Therefore it is usually not possible to apply for a passport by post, with the exception of minors under 12 years old.

An Italian citizen can request the issuance or the extension of a passport at a consular jurisdiction in which he/she is not a resident. In that case it must however be stressed that the timeframe for the issue of the passport will be longer than usual since it is necessary to wait for the clearance ("*nulla osta*") of the Italian office (Italian Consulate or Police Commissary - *Questura*) authorised for the area in which the applicant resides.

Indeed, as to the timeframe the passport is usually issued on the same day as the appointment if the applicant is registered with AIRE and its documentation is complete. The timeframe may generally depend on some authorizations needed. In any cases the issue of passports is done within the times provided for by the law no. 1185/67 (up to 30 days).

³⁰ In Italian: "*Dichiarazione sostitutiva di certificazioni*" (Art. 46 D.P.R. 445 del 28/12/2000).

³¹ See, just to give an example, the Italian Embassy in Japan: http://www.ambtokyo.esteri.it/Ambasciata_Tokyo/Menu/Informazioni_e_servizi/Servizi_consolari/Passaporti/Passaporti.htm



Under exceptional circumstances, Italian nationals who are not registered with A.I.R.E. may request the issue of a passport from a Italian Consulate in the case of a proven emergency. The required circumstances must be justified and backed up by well documented proof of urgency.

As a general rule, Italian nationals who find themselves in emergency situations (e.g. tourists in transit with an imminent departure date that have been robbed of or have lost their passports) and with insufficient time for the necessary normal passport issuance procedure, the locally authorised consulate can issue the so-called Emergency Travel Document (ETD). This document, as already said, is valid only for travel back to Italy or to the country of legal residence or, in exceptional cases, to another destination.

These are the documents to be generally submitted to an Italian consular office by an applicant over 18³²:

- the application form
- a previous passport, or if applying for the first passport, an Italian document of identification (identity card) or foreign document of identification (passport), containing a photo and signature. If the passport has been lost, it is necessary to fill a specific statement form ;
- two photographs (identical and recent, in passport format, colour with a white background, in forward facing position, face uncovered, eyes open, glasses not covering main characteristics of the face.

If the applicant has children who are minors, besides these documents, the written consent of the other parent, together with his/her documentation with signature and photo (in this case a photocopy is sufficient) is needed. Also in this case the consent is necessary notwithstanding the status of the parents (i.e. also in

³² Information are taken from the website of the Consulate General of Italy in London, but the policy is almost the same anywhere:
http://www.conslondra.esteri.it/Consolato_Londra/Menu/I_Servizi/Per_i_cittadini/Passaporti/



cases of unmarried separated or divorced couples and even if the children already have an individual passport).

It must be underlined that if one of the parents is not a EU citizen, the application form must be signed in the presence of an officer, on presentation of a document of identification.

Where it is not possible to obtain the consent of the other parent, a Decree signed by the “Giudice tutelare” (Guardianship Judge) will be needed. The Consul General abroad may act as Guardianship Judge for minors residing in their district.

If the minor resides in Italy, the Italian Juvenile Court (*Tribunale per minorenni*) has jurisdiction. If the minor does not reside in Italy, the Italian Consul General of the Consulate or Embassy of the place of residence has jurisdiction.

To apply for travel documents for a newborn child, a copy of the child’s birth certificate is needed. Thus, before requesting the passport parents shall ensure that their child’s birth certificate has been registered with AIRE, either by directly contacting the Italian Authority or through the competent consulate representation in the place of birth. If the birth is not yet registered parents need to make an appointment with the Registry Office (*Ufficio di Stato Civile*) of the consular representation.

If the minor is a foreign-born, it must be underlined that, as already mentioned, the child’s birth certificate must be translated and legalised (or with affixed annotation) to the authorised consulate. In some cases a multilingual format certificate may be required.



Question 10 – Acquisition for newborn children of non-nationals at domestic public offices

- ✓ Is it possible for non-nationals to obtain travel documents for a newborn child at the domestic public offices in your Member State? *If not, skip to Question 9.*
- ✓ If so, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)
- ✓ If the possibility is there, which information and certificates are non-nationals expected to adduce at national public offices when applying for travel documents for a newborn child?
- ✓ If the possibility is there, is the timeframe for the issuing of such travel documents noticeably longer or shorter, as compared to when own nationals apply for travel documents for their children?

With reference to newborn children of non-nationals, passports may be issued only if the child is a Italian citizen. In this case the Italian law has expressly extend to EU citizens the procedure to be followed by parents in order to give their consent to the issuance of the passport. Accordingly, if a parent cannot be present for the declaration, the applicant may submit a copy of the valid identification document of the absent parent signed in original together with its written self-declaration of consent to the expatriation of the minor³³. This rule cannot be applied to non-EU citizens.

Newborn children that are not Italian citizen cannot have an Italian passport.

As to the ID card, the birth's certification must be added. Indeed a non-national newborn shall be registered with the Civil Status Office (*Ufficio di Stato Civile*) of the Italian Municipality of birth. Two procedures may be followed: by a declaration to be submitted either directly to the Health management offices (*Direzione Sanitaria*) of the Hospital to within 3 days from the birth or to the Register Office within 10 days.

The officer of the Civil Status Office notifies the birth' certification to the officer of the Register Office (*Anagrafe*) in order to let the newborn be registered as a resident. This is however subject to the previous check by the *Anagrafe* of the real registration of the parents as residents too.

³³ Pursuant to DPR 445/2000.



No other relevant differences specifically concern the acquisition of travel documents by non-national newborn.

Question 11 – Travelling with minors

Background example (fictitious)

Lena is a twelve-year old Austrian girl from Vienna, taken out by her Turkish stepfather for a mini-holiday to be spent in Istanbul. They travel by car, intending to pass through Hungary, Romania and Bulgaria along the way.

Arriving at the border between Hungary and Romania, she and her stepfather are stopped by two immigration officers, and requested to produce a written statement from Lena's mother confirming that she consents to the trip, before they are both allowed to continue their journey.

- ✓ In addition to their own valid travel document, does your country require minors travelling alone to produce any extra (official) documents signed by their parents or legal guardian(s) authorising them to travel?
- ✓ In addition to their own valid travel document, does your country require minors travelling with adults who are not their legal guardian to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?
- ✓ In addition to their own valid travel document, does your country require minors travelling with only one parent to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?

As far as minors are concerned, they need an individual travel document in order to travel within, as well as outside, the European Union³⁴. This document can be either the identity cards (considered as a valid travel document within the Schengen area) or the passport for non-EU countries. The issue of travel documents for minors requires, as above stated, the written consent of both parents.

In addition to their own valid document, Italy requires minors up to the age of 14 travelling alone as well as those travelling with adults who are not their parents or legal guardian to produce an extra document, namely the so-called declaration of accompaniment ("*dichiarazione di accompagnamento*" in Italian). Starting from 2012 minors cannot be listed on parents' passport anymore.

³⁴ See above.



In Italy, minors up to the age of 14 may expatriate only if they are accompanied by at least one legal parent or guardian, or if they are listed in a declaration of accompaniment submitted by the parents or by someone legally authorised to give consent according of Art. 3, letter a) of the Passport Law, and authenticated by the Italian Policy (*Questura*, in Italy) or by consular representatives (abroad) concerning the name of the person, agency or transport company to whom the minors are entrusted.

On 4 June 2014 the Italian Parliament passed a new law regulating the declaration of accompaniment aiming at a higher protection of minors, and at facilitating border controls, as well as the submission of the declaration by electronic means (e.g. by e-mail, certified e-mail, or fax).

According to the recent reform:

- the declaration of accompaniment shall refer to a single journey (including the return trip) from the minor's country of residence to a predetermined destination, which can normally not exceed a period of 6 months;
- legal parents or guardians can indicate to a maximum of two accompanying persons, alternative to each other;
- when submitting the declaration of accompaniment, legal parents or the guardian can ask the names of the accompanying persons, the duration of the journey and the destination to be printed on the minor's passport. They can alternatively ask those data to be written on a separate statement printed by the issuing office;
- the latter separate statement is the only to be issued when the minor is entrusted to the care of an agency of transport company, in order to ensure the completeness and legibility of the journey data. In this case, it is important to ascertain before purchasing the ticket if the transport company is willing to accept the entrustment of the minor and if it requires further documents or statements.



If minors are accompanied by at least one parent or guardian no specific extra document must be produced. Parents are nevertheless suggested to carry documentations proving their parental authority, such as for instance the birth certificate, the appointment of the guardian, certificate attesting the composition of the family etc.



PART III – INCLUSION OF BIOMETRIC DATA AND ITS EFFECTS

Question 12 – Inclusion of fingerprints (pursuant to EU law) and its possible effects

- ✓ Did your country already introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents *before* the adoption of Regulation 2252/2004/EC? *If so, skip to Question 13!*
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?
- ✓ Do citizens generally experience the inclusion of biometric data in passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the adoption of the Regulation (e.g. on the number of passports issued).

No, Italy did not introduce measures requiring the collection and retention of the fingerprints data for use in connection with travel documents before the adoption of the EU Regulation.

As far as privacy is concerned it must be underlined that rules on personal data are embedded in the Italian Data Protection Code (IDPC) (Legislative Decree 30 June 2003, no. 196)³⁵.

The framework for privacy aims at ensuring that personal data is processed in compliance with the data subjects’ rights, fundamental freedoms and dignity, with particular reference to confidentiality, personal identity, and the right to personal data protection.

³⁵ For a general overview see, for instance, G. Finocchiaro, *Privacy e protezione dei dati personali. Disciplina e strumenti operativi*, Torino, Zanichelli, 2012.



The respect of this framework is granted by the Italian Data Protection Authority (*Garante per la protezione dei dati personali*, hereinafter IDPA). It is an Independent Authority set up in 1997 to protect fundamental rights and freedoms in connection with the processing of personal data, and to ensure respect for individuals' dignity³⁶.

The Italian institutional context is indeed based also on the role performed by the so-called "*autorità amministrative indipendenti*" (independent administrative authorities), i.e. bodies which distinguish themselves from other institution because they:

- are independent from the Government and from its political orientation;
- perform control and arbitration functions in some economic sectors;
- they are intended to guarantee rules usually based on EU values, especially those concerning the competitive market³⁷.

In particular under the Data Protection Code 196/2003 the tasks of the IDPA include the following: "supervising compliance with the provisions protecting private life; handling claims, reports and complaints lodged by citizens; banning or blocking processing operations that are liable to cause serious harm to individuals; checking, also on citizens' behalf, into the processing operations performed by police and intelligence services; carrying out on-the-spot inspections to also access databases directly; reporting to judicial authorities on serious infringements; raising public awareness of privacy legislation; fostering the adoption of codes of practice for various industry sectors; granting general authorizations to enable the processing of certain data categories; and participating in Community and international activities, with particular regard to the work of joint supervisory authorities as per the relevant

³⁶ For more detailed information see the IDPA website (English version): http://www.garanteprivacy.it/web/guest/home_en

³⁷ See, for instance, R. Bin, G. Pitruzzella, *Diritto costituzionale*, Torino, 2015.



international conventions (Schengen, Europol, Customs Information System)”³⁸. With reference to the measures adopted by Italy to give further effect to the main EU instruments regulating fingerprints data in connection with travel documents, it must be stressed that the IDPA draws Parliament’s and the Government’s attention to the need for regulatory measures in the data protection sector and, above all, renders mandatory opinions on regulatory instruments and administrative measures drafted by public administrative bodies³⁹.

In this perspective it is worth noting that the IDPA has given some advices to the Italian authority as regards the measures concerning the electronic passport and the proceeding of fingerprint data.

In 2009, for instance, the Authority gave an advice on the decree on the electronic passport⁴⁰ considering that the innovations introduced by the decree compared to the previous one (of 2006) did not raise specific problems in the protection of personal data, but at the same time suggesting some changes in order to better comply with privacy rights as guaranteed under the Italian Data Protection Code and to improve the level of their protection in the procedures needed to issue an electronic passport.

In particular, in order to give a positive advise to the draft decree the IDPA suggested the following two changes⁴¹:

- to expressly introduce an adequate information on personal data proceedings (“*informativa sul trattamento dei dati personali*”) in the specific form to be signed and submitted to apply for a passport.
- to better define the offices in charge of the issuance of the electronic passport.

³⁸ http://www.garanteprivacy.it/web/guest/home_en/who_we_are

³⁹ The IDPA also submits an annual report to Parliament describing its activities.

⁴⁰ See below answer to Question no.2.

⁴¹ IDPA, advice of 18 June 2009, doc. web n. 1630422, available at the IDPA website: <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1630422>



In 2012 the Italian Ministry of Foreign Affairs requested an advice to the IDPA on the draft of a measure concerning the technical safety features of the procedure to be followed in order to issue an electronic passport, adopted on the basis of the mentioned Ministerial Decree no. 303/014 of 23 June 2009 (see above).

It is interesting to note that the suggestions made by the Authority regarded, in particular, the relevance and non-excess of the data proceeded, in compliance with the principles of proportionality and pertinence compared to the aims pursued by the measure, as well as the safeguards concerning safety in the collection and proceedings of biometrical data, the duty to delete fingerprints after the issuance of the passport, adequate care in order to avoid abuses in checking and confirming the authenticity of data included in the document. Since the suggestions made by the IDPA have been completely adopted by the competent authority, the draft decree was considered to be in compliance with the protection of personal data⁴².

The IDPA supervises over the respect of these rules. As to the types of proceedings that can be brought, with reference to privacy issues, three remedies can be used before the IDPA: the circumstantial claim (*reclamo circostanziato*), used to report an infringement to the regulation regarding personal data processing; the report (*segnalazione*), that is used when it is not possible to claim through a “*reclamo*” to ask for the monitoring of the IDPA; and the claim (*ricorso*) aimed at claiming specified rights.

As to the “chilling effect” of biometrical data, there are no reliable statistic so far.

⁴² IDPA, advice of 22 November 2012, doc. web n. 2222980, available at the IDPA website: <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/2222980>



Question 13 – Inclusion of fingerprints (unilaterally) and its possible effects

(only to be answered in continuation of Question 12, first sub-question!)

- ✓ When did your country introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents?
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?
- ✓ Do citizens generally experience the inclusion of biometric features in the passports and travel documents as a hindrance, i.e. did they in any way have a 'chilling effect' on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the mandatory introduction of biometric features in your country (e.g. on the number of passports issued).

Question 14 – Processing of biometric data and possible objections thereto

- ✓ Did the measures introduced in your country requiring the collection and retention of the fingerprint data for use in connection with travel documents indicate where the data is to be kept, or is this otherwise known (e.g. a central registry)?
- ✓ In case such data is kept in a central registry, does domestic law allow for it to be used / processed also for other purposes, such as national security, prevention of crime and identification of disaster victims?
- ✓ In case such data is kept in a central registry, and domestic law allows for it to be used / processed also for other purposes, was this leniency introduced openly and without (public) resistance?
- ✓ In case there was (public) resistance and if there were objections lodged, either during the parliamentary process or in subsequent court procedures, what were the outcomes and effects of these actions?

The measures introduced in Italy requiring the collection and retention of the fingerprint data for use in connection with travel documents are embedded in



Ministerial Decree no. 303/014 of 2009 and in the Ministerial Decree no. 303/13 of 23 March 2010.

In compliance with Art. 11 of the Data Protection Code, expressly state that biometrical data can be used only to verify the authenticity of the document and the identity of the bearer through comparative elements. Therefore biometrical data are not kept in a database or register but must be deleted immediately after the issuance of the document⁴³.

A “passport database” (*Banca dati dei passaporti*) has been created pursuant to Art. 7 of the Ministerial Decree of 2009 at the Ministry of Foreign Affairs, which is also the holder of the personal data. For passports the following elements are registered:

- Data identifying the passport and the chip;
- Personal details and photos of the bearer;
- Information concerning the loss or theft of the passport;
- Information regarding the suspension of its validity

Fingerprints and data deriving from them are instead not included.

With reference to fingerprints data it must also be said that there is an expressive exception for minors under the age of 12 and for persons for whom it is physically impossible to take them.

Permanent pathology or physical impediment shall be duly documented the impossibility must be given (e.g. through a medical certificate), whereas physical

⁴³ See Art. 2 of the Ministerial Decree of 2010 (in Italian: D. M. 23 marzo 2010: Disposizioni in materia di libretti di passaporto ordinario (Decreto n. 303/13): “Gli elementi biometrici contenuti nel chip potranno essere utilizzati solo al fine di verificare l'autenticità del documento e l'identità del titolare attraverso elementi comparativi direttamente disponibili quando la legge lo prevede. I dati biometrici raccolti ai fini del rilascio del passaporto non saranno conservati in banche di dati. La presente disposizione si applica anche alla normativa sui passaporti diplomatici e di servizio”. See also the already mentioned advice of the IDPA of 2012.



disability or malformation clearly evident do not need to be proven. In these case an ordinary passport without fingerprints is issued, which is valid for 10 years. If the impossibility of taking fingerprints is only temporary (and not due to the applicant choice) a Temporary Passport can be issued.

In Italy only Police offices are allowed to fingerprinting.

Question 15 – Collection of other types of biometric data and possible objections thereto

- ✓ Beyond fingerprints, are in your country any other types of biometric data required to be included in passports and other travel documents? If so, which types?
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests, and what were their effects?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were the outcomes of these procedures?
- ✓ Do citizens generally experience the inclusion of this additional biometric data in the passports and travel documents as a hindrance, i.e. did they in any way have a 'chilling effect' on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the introduction of these requirements.

According to the Italian regulation governing passport as recently amended in compliance with EU law, the only other biometric data is the photo of the bearer.

The biometric passport has strict standards and only photos that meet the ICAO standards are acceptable.

As already know the main features of all passport photos are:

- They must be recent (not more than 6 months old);
- They must be in colour (not black and white);
- The person in the photo must have a neutral expression and have their mouth closed (no smiling);
- Eyes must be completely open and visible;



- Photos must have a white background and good lighting;
- No flash reflections on the face are permitted, and most importantly no red eye effects;
- The face must be visible with at least 70-80% from the base of the chin to the forehead;
- The photos must be well focused;
- The person must be looking straight into the camera and not sideways or in portrait style;
- The face of the person must be centred;
- Photos must be 35x40 mm large;
- The photo must be printed on proper, photographic paper and be of high quality;
- The photo must show the person only, no other person or objects are allowed in the background.

Some important aspects concern people wearing glasses, and namely: **the** photo must show the eyes clearly and without any reflections from the flash on the lenses (alternatively people are advised not to wear any glasses at all); persons must not wear tinted lenses (i.e. no sunglasses are allowed), nor glasses with a thick frame (in particular, the frame should not cover or obstruct any part of the eyes as these must be always visible.

Passport photos usually do not raise specific objections. Some sensitive issues may concern customs based on cultural or religious grounds, which may cover the head, such as the hijab, the turban or similar religious attires. In this perspective it must be stressed that the protection of freedom of religion can be balanced with other public interest and, under certain conditions, justify the covering of the head also in passport photos. Nevertheless head covering cannot cover the face at all: the contours of the face, including forehead, chin and sides of the face must indeed remain always visible.



PART IV – ACTUAL OR POTENTIAL OBSTACLES FOR EU CITIZENS

Question 16 – Hindrances for own nationals as regards the venues and costs for obtaining travel documents

- ✓ In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by own nationals with regard to the *accessibility of the venues* where travel documents can be obtained or renewed?
- ✓ Equally, in reference to the answers provided to Questions 5-10 above, are any particular hindrances experienced in your country by own nationals with regard to the *costs* associated with the application for and acquisition of travel documents?

As to the hindrances that might be experienced in Italy, it is worth noting that to obtain a passport applicants need to access to different venues. This aspect may condition the timeframe, also as regards the working commitments of the applicant. The receipt for payment of fee and related tax for use of the passport must indeed be submitted together with the application form and the payment must be done at the postal service, thus taking other time besides that needed to apply for the document at the competent offices. The person then usually need to go back to the police office for the delivery of the passport.

In this perspective, it must be however stressed that Italy has recently passed some rules aiming at simplifying the procedure. Nevertheless the new means are usually not for free since further costs are provided for applicants using them. In particular, as already underlined, starting from 2006 thanks to an agreement between “*Poste Italiane*” (i.e. the national postal service) and the Italian Ministry of Foreign Affairs, also postal offices may receive application forms for the issuance of the passport. The person can therefore apply in the same venue where it has to pay the passport fee. The postal office will then forward the application to the *Questura* and the passport will then be sent to the applicant.

The fee for this service is 20,00 Euro and it must also be remembered that in any cases only police offices can take fingerprinting. The applicant is therefore obliged to go to this venue for the fingerprinting.



On 27 October 2014 “*Poste Italiane*” and the Department of Public Security (*Dipartimento della Pubblica Sicurezza*) signed an agreement permitting the delivery of the passport directly to the domicile of the applicant. The cost of the service is 8,20 Euro.

A completely for free service has instead been recently introduced for online application. The service introduced in December 2010 is called “*Agenda Passaporto*” and allows applicants to apply via web by registering on the website of the State Police and fulfilling the online form⁴⁴.

This system simplifies the procedure although it only gives the opportunity to choose place, day and time for the submission of the documentation and for fingerprinting at the competent offices.

Another aspect which can make the issuance of travel documents more difficult as to venue and cost (especially of passports that may be urgently needed for travel outside the EU) is the need to apply to the office of the municipality of residence. Persons that have their domicile in another city must therefore either return to their municipality of residence or apply to the office of the place where they have the domicile, but in this case they need to wait the authorization by the competent office of the municipality of residence.

⁴⁴ Information and online application are available at the State Police website: <https://www.passaportonline.poliziadistato.it/>



Question 17 – Hindrances for EU citizens as regards the venues and costs for obtaining travel documents

- ✓ What are the three largest groups of non-national EU citizens that annually visit your country (i.e. short-term residents in the sense of Directive 2004/38/EC, stay < 3 months)?
- ✓ What are the three largest groups of non-national EU citizens present in your country for a more extended duration (i.e. long-term residents in the sense of Directive 2004/38/EC, stay > 3 months)?
- ✓ In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by these particular groups of mobile EU citizens with regard to the *accessibility of the venues* where travel documents can be obtained or renewed? (e.g. necessity to travel abroad, due to the unavailability of consular delegations)
- ✓ In reference to the answer provided to Question 8 above, are any particular hindrances experienced in your country by these particular groups of mobile EU citizens with regard to the *timeframe* associated with the application for and acquisition of travel documents for *newborn children*?

(Note that some of the data necessary to provide an answer to this question may be procured from consular authorities of the relevant Member States, from national complaint bodies such as Ombudsmen, or by contacting mobile EU citizens and inquiring if they have personally encountered any such problems.)

In Italy the three largest groups of non-national EU citizens that visit the country as short-term residents are usually tourists, or people travelling for business or study reasons.

EU citizens have the right of residence in Italy for a longer period, i.e. three months. They are workers or self-employed persons in Italy; persons enrolled at a private or public establishment for the purpose of study, e.g. to follow a course of study, including vocational training; family members accompanying or joining a EU citizen who has the right to be a long-resident.

These people need to give evidence of having sufficient resources for themselves (and eventually their family members) in order not to become a burden on the Italian social assistance system. They also need a comprehensive health insurance⁴⁵.

⁴⁵ As to the general framework for these two groups see, for instance, Legislative Decree of 6 February 2007, no. 30 on the transposition of Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory of the Member States”, published in the Official Journal (O.J.) no. 72 of 27 March 2007; law



With reference to these two groups of mobile EU citizens there are not specific hindrances regarding the accessibility of venues where travel documents can be obtained or renewed. Indeed the conditions to access are the same and the differences in procedures are mainly linked to further documents or administrative fulfilments that may be requested in some cases, in compliance with EU law, but not to discrepancies in the treatment of EU citizens at the public offices. The same applies to EU newborn children.

Also according to Art. 9 (administrative fulfilments) of Legislative Decree no. 30 of 2007 transposing Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, “for the registration and the release of the registration’s certificate and of the identity document, the same provisions laid down for Italian citizens will apply” to EU citizens.

As specifically regards the availability of consular delegations the main hindrance may derive from the fact that they are located only in few big Italian cities. Non-nationals that are not resident in one of these cities need therefore to travel throughout Italy in order to obtain or renew their travel documents.

68/2007 on the residence for short periods of foreigner nationals for visits, business tourism and study, published in the O.J. n. 126, of June 2007; Legislative Decree of 25 July 1998, no. 286 on Laws on the regulation of immigration and provisions on the conditions of the foreigner national, published in the O.J. no. 191 of 18 August 1998, *Supplemento Ordinario*, no. 139.



Question 18 – Discrepancies in the recognition of travel documents for identification purposes

Background example (fictitious)

Björn is Swedish and holidaying in Slovakia. He took his ID card issued by a bank with him – which in Sweden is accepted as proof of identity.

Björn could get into trouble however if the Slovakian authorities want to check his identity, because the only valid ID documents they recognise are national ID cards and passports issued by the Swedish authorities.

- ✓ Are there discrepancies in the travel documents recognised as valid ID in the home country of the three largest groups of non-national EU citizens that annually visit your country (identified under Question 17), as compared to the travel documents that are recognised in your Member State?
- ✓ Are there discrepancies in the travel documents recognised as valid ID in the home countries of the three largest groups of non-national EU citizens present in your country for an extended duration (identified under Question 17), as compared to the travel documents that are recognised in your Member States?

In Italy the three largest groups of non-national EU citizens that visit the country as short-term residents are usually tourists, or people travelling for business or study reasons.

EU citizens have the right of residence in Italy for a longer period, i.e. three months. They are workers or self-employed persons in Italy; persons enrolled at a private or public establishment for the purpose of study, e.g. to follow a course of study, including vocational training; family members accompanying or joining a EU citizen who has the right to be a long-resident.

These people need to give evidence of having sufficient resources for themselves (and eventually their family members) in order not to become a burden on the Italian social assistance system. They also need a comprehensive health insurance⁴⁶.

⁴⁶ As to the general framework for these two groups see, for instance, Legislative Decree of 6 February 2007, no. 30 on the transposition of Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory



With reference to these two groups of mobile EU citizens there are not specific hindrances regarding the accessibility of venues where travel documents can be obtaining or renewed. Indeed the conditions to access are the same and the differences in procedures are mainly linked to further documents or administrative fulfilments that may be requested in some cases, in compliance with EU law, but not to discrepancies in the treatment of EU citizens at the public offices. The same applies to EU newborn children.

Also according to Art. 9 (administrative fulfilments) of Legislative Decree no. 30 of 2007 transposing Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, “for the registration and the release of the registration’s certificate and of the identity document, the same provisions laid down for Italian citizens will apply” to EU citizens.

As specifically regards the availability of consular delegations the main hindrance may derive from the fact that they are located only in few big Italian cities. Non-nationals that are not resident in one of these cities need therefore to travel throughout Italy in order to obtain or renew their travel documents.

of the Member States”, published in the Official Journal (O.J.) no. 72 of 27 March 2007; law 68/2007 on the residence for short periods of foreigner nationals for visits, business tourism and study, published in the O.J. n. 126, of June 2007; Legislative Decree of 25 July 1998, no. 286 on Laws on the regulation of immigration and provisions on the conditions of the foreigner national, published in the O.J. no. 191 of 18 August 1998, *Supplemento Ordinario*, no. 139.



Question 19 – Consequences of expiry or loss

✓ Does your country allow for EU citizens to enter the territory without being in possession of a valid travel document? If so, under which conditions?

✓ Does your country allow for EU citizens to exit the territory without being in possession of a valid travel document? If so, under which conditions?

✓ Which sanctions, if any, are applied to *own nationals* that are found to be not in possession of a valid travel document when attempting to enter or exit the country?

Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

✓ Which sanctions, if any, are applied to *nationals of other Member States* that are found to be not in possession of a valid travel document when residing in, transiting or travelling across your country?

Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

As a general rule, as already stated, EU citizens need simply an identification documents in order to travel within Italy (see above).

According to Art. 5.5. of Legislative Decree no. 30 of 2007 transposing Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member-States “a Union citizen or a family member who is not a national of a Member State and who does not have the necessary travel documents or, if required, the necessary visa, cannot be turned back if he/she brings the necessary documents or if he/she corroborates by other suitable means according the national law, that they are covered by the right of free movement and residence, within 24 hours from the request”.

A EU citizen, whose passport is expired while travelling in Italy, and who has no other valid identity documents for leaving the country, will be generally asked to contact the embassy or consulate in Italy to obtain a temporary travel document.

In emergency situations, the consular representations may issue the so-called E.T.D. (Emergency Travel Document), i.e. a document valid only for the return journey to the country of permanent residence.



In any case for both Italian and EU citizen the border police is in charge.

As to Italian citizens, it must be underlined that from a general perspective there is a difference under the Italian legal system between the duty to identify itself and the duty to show valid documents. Italians citizens without documents can be simply accompanied to a police office in order to identify him/her self. According to the Italian Criminal Code (Art 651) the refusal to give information on one's own identity to a public official may be punished by the arrest (*arresto*) up to one month or by a financial penalty (*ammenda*) of 206 Euro. As to identity documents instead according to Royal Decree (*Regio decreto*) 8 June 1931 n. 773 on the approval of the Laws in the field of public administration, published in the O.J. n. 146 of 26 June 1931 (so-called T.U.L.P.S) only dangerous or suspect persons can be obliged to obtain and show and identity document (Art. 4).

As to EU citizens, according to the above mentioned Legislative Decree no. 30 of 2007 (New Art. 21.1 D.Lgs n. 30/07 as replaced by Art. 1.1 e) D.Lgs n. 32/08) "the expulsion decision of other Member States' citizens and their family members irrespective of nationality, may also be adopted when the conditions that give the person concerned the right of residence, referred to in the above lack".

Question 20 – Grant of consular protection to EU citizens not in possession of valid travel documents

✓ In practice, is in your country consular protection granted by other countries to mobile EU citizens that are found not to be in possession of valid travel documents?

If available, please include in your answer any figures, statistics and/or salient examples with regard to the occurrence of the grant of consular protection in such cases.

As already known, according to the EU Treaty, which is directly binding in the Italian legal system, EU citizens have "the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented,



the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State”.

In emergency situations, the consular representations of EU countries may issue a temporary travel document (the so called E.T.D. - Emergency Travel Document) which, as already mentioned, is valid only for the return journey to the country of permanent residence.

As to the Italian legal framework, EU citizens can be issued an ETD pending formal authorisation by the diplomatic representation or Ministry of Foreign Affairs of the applicant's home country and upon submission of the following documentation:

- 1) Report of the loss or theft of the passport or other travel document to (pursuant to Artt. 46, 47 and 76 of Presidential Decree 445/2000);
- 2) Local police report of the loss or theft of the document;
- 3) 2 identical, front-face, 35 x 40 mm colour photographs;
- 4) Ticket;
- 5) Receipt for payment of the fee for the document (currently €1.55). If the person concerned is not able to pick the document up in person, mailing costs can also be added.



Question 21 – Possible documentation-related obstacles suffered in travelling with minors

- ✓ Are the additional documentation requirements (if any) imposed on minors travelling alone, travelling with adults who are not their legal guardian, and/or travelling with only one parent, known to cause substantial hindrances to mobile EU citizens in practice?

From a practical perspective, some travel companies may require further documentations for minors, especially if travelling alone. Also some EU Member States may subordinate the documentation of minors to further checks or limit their validity (e.g. that of the birth certification) according to the date of issuance.

That is why parents are usually suggested by the Italian authorities to check these further requirements before the departure and/or to bring further documents attesting their parental authority or their consent beyond those officially required by the Italian State⁴⁷.

With reference to the passport for minors it is worth mention that the Italian Constitutional Court stated on Art. 3 of the Passport Law⁴⁸, imposing the principle of equality between biological and legal parents as to the necessary consent⁴⁹.

⁴⁷ Useful information are usually available on the website “*Viaggiare Sicuri*” of the Italian Ministry of Foreign Affairs: <http://www.viaggiaresicuri.it/approfondimenti/prima-di-partire/documenti-per-viaggi-allestero-di-minori.html>

⁴⁸ Law no. 1185 of 21 November 1967, Art. 3, letter b).

⁴⁹ Constitutional Court, decision no. 464 of 16-30 December 1997.



PART V – ACTUAL OR POTENTIAL OBSTACLES FOR TCN FAMILY MEMBERS

Question 22 – Possible documentation-related obstacles suffered by TCN family members with residence cards

Background example (fictitious)

Wen-ling, the Chinese spouse of a Dutch national living in Finland, has been issued an EU family member's residence card in Finland. Wen-ling and her husband wish to travel to Romania. As long as she is in possession of a valid passport and an EU family member's residence card, the latter country does not require her to have obtained of an entry visa. However, if she were to travel alone, she is required to have acquired such a document beforehand.

- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country and in possession of a family member's residence card?
- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country and in possession of a family member's residence card, issued by the Member State where the family member is living with the EU national?
- ✓ Does your country require the possession of a family member residence card for third country national family members of EU nationals of another Member State travelling alone on domestic flights?

As to family members it must first of all be stressed that in compliance with EU law, Art. 3.2 of the Italian Legislative Decree no. 30 of 2007 extends the notion of “family members” to other categories, stating that, without prejudice to any right to free movement and residence the persons concerned may have in their own right, Italy as a host Member State “shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

a) any other family members, irrespective of their nationality not falling under the definition in paragraph 1 b) of Article 2⁵⁰ who, in the country from which they have come, are dependants or members of the household of the Union citizen having

⁵⁰ Article containing the list of persons considered as “family members” in compliance with Directive 2004/38/EC.



the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

b) the partner with whom the Union citizen has a durable relationship, duly attested by the State of the Union citizen”.

In this perspective, the Italian act, transposing literally the EU directive, states also that Italy “shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people”.

As already said, pursuant to Art. 4 family members of EU citizens “who are not nationals of a Member State but who hold a valid passport shall have the right to leave the national territory to travel to another Member State”. Similarly, according to Art. 5 Italy “shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport”.

With reference to visa and residence card, according to Art. 5.2 D.Lgs n. 30/07 and to the Circular of the Ministry of Internal affairs of 10 April 2007 “family members who are not nationals of a Member State shall only be required to have an entry visa, when requested⁵¹”.

However pursuant to Article 10 of the same act⁵² “after three months from the date of arrival in the national territory, family members of a Union citizen who are not nationals of a Member State [...] shall ask for the “*Carta di soggiorno di familiare di un cittadino dell'Unione*” (residence card for family member of a Union citizen), [...] to the Police (*Questura*), territorially competent”. The Italian law provides that the possession of this valid residence card exempts family members from the visa requirement. Similarly, if the family member has the residence card Italy does not place an entry or exit stamp in its passport of family members who are not nationals of a Member State.

⁵¹ Meaning “in accordance with Regulation (EC) No 539/2001” as stated in Directive 2004/38/EC.

⁵² Art. 10 Legislative Decree no. 30/2007 on Residence cards for family members of Union citizens who are not nationals of a Member State.



The rule (Art 5 bis) added by legislative Decree no. 32/08 also provides that: “According to the length of his/her stay, the Union citizen or his/her family member, may go to a police office in order to declare his/her presence in the national territory”. Pursuant to this article “If the declaration of presence is not made, it is presumed, until proof of the contrary, that the period of residence is extended of more than three months”.

With reference to short stay, it must be stressed that EU citizens have the right of residence on the Italian territory for a period of up to three months “without any conditions or any formalities other than the requirement to hold a valid identity document/card which is valid for expatriation according to the legislation of the State of nationality”⁵³. The Italian law expressly states that this provision “also apply to family members who are not nationals of a Member State, in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen and who have entered the national territory”. In the beginning this Article also added “according to Article 5.2.” and this reference meant that the visa was still require. Legislative Decree no. 89 of 23 June 2011 (on urgent provisions for the implementation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member-States and of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals)⁵⁴ repealed this part.

With reference to long stay specific categories of EU citizen have the right of residence on the Italian territory for a period of longer than three months⁵⁵, among them also family members accompanying or joining a EU citizen. In particular the law states that “The right of residence [...] shall extend to family members who are not

⁵³ Art. 6.1. Legislative Decree no. 30 of 2007.

⁵⁴ In Italian: decreto-legge 23 giugno 2011, n. 89 “Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari”.

⁵⁵ See above answer to question no. 17.



nationals of a Member State, accompanying or joining the Union citizen” meeting the conditions required.

For the registration with the Rester Office (*iscrizione anagrafica*)⁵⁶, in addition to what is required for Italian citizens family members of EU citizens, who do not have autonomous right of residence, shall add further documents such as a valid identity document or passport and the entry visa when required, documents attesting to the existence of a family relationship, the certificate of the application for registration of the family member of the EU citizen, etc (see Art.9).

For the above mentioned residence card specific documents are required, such as the passport or equivalent valid document; document attesting to the existence of a family relationship and, if required, of dependant family member; the certificate of the application for registration of the family member of the Union citizen; etc. Also this case it is worth noting that according to the original drafting the visa was required too; in 2011 the related part of the Article has been repealed. The resident card of a family member of a EU citizen is valid for five years from the date of issue.

Question 23 – Possible documentation-related obstacles suffered by TCN family members without residence cards

- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country, and not in possession of a family member’s residence card?
- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country, and not in possession of a family member’s residence card?

⁵⁶ Pursuant to Art. 9.2 the registration with the Anagrafe “is in any case required after three months from the date of arrival and a registration certificate is issued immediately, sta The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration”.



According to the rules mentioned in the previous answer, in Italy third country nationals that are family members of EU citizens need in any case a visa if they are not in possession of a resident card. However they can get their entry visas free of charge. Indeed according to Article 5 of Legislative decree no. 30 of 2007 the visas for family members of EU citizens are to be issued free of charge “as soon as possible and on the basis of an accelerated procedure”.

PART VI – ANY OTHER OBSTACLES

Question 24 – Other obstacles

✓ Are there any other de jure or de facto obstacles in your country as regards the acquisition or use of travel documents not addressed in your responses to the previous questions?

There are not specific obstacles concerning the acquisition or use of travel documents not addressed so far. Nonetheless the access to travel document may sometimes be *de facto* hindered by difficulties in understanding the complexity of the legal framework for travel documents as a whole, since it often consists of a plurality of subsequent sources of law with different nature (e.g. statutory, administrative, etc), different positions in the Italian legal hierarchy and concerning different branches of law (administrative, criminal, civil, constitutional etc.).

That is why an adequate availability of information on institutional websites or at institutional offices is strongly needed. This information is deeply given in Italy but from a linguistic perspective translations in (at least the main) EU languages still need to be improved.



List of the main national provisions

- Law of 21 November 1967 n. 1185, provisions on passports published in the O.J. n. 314 of 18 December;
- Legislative Decree of 25 July 1998, no. 286 on Laws on the regulation of immigration and provisions on the conditions of the foreigner national, published in the O.J. no. 191 of 18 August 1998, *Supplemento Ordinario*, no. 139;
- Presidential Decree of 28 December 2000, n. 445 on legislative and statutory provisions in the subject of administrative documentation, published in the O.J. n. 42 of 20 February 2001, *Supplemento Ordinario* n. 30;
- Law of 16 January 2003, n. 3 on Provisions in the field of public administration, published in the O.J. n. 15 of 20 January 2003, SO n. 5;
- Law no. 43 of 31 March 2005;
- Ministerial decree of 29 November 2005 on electronic passport (Published on the Official Journal no. 13 of 17 January 2006);
- Ministerial Decree of 31 March 2006 on the electronic passport (Disposizioni sul passaporto elettronico).
- Ministerial Decree of 9 May 2006 on electronic passport fees (Importo delle spese da porre a carico dei soggetti richiedenti il passaporto elettronico);
- Ministerial Decree of 18 October 2006 (“Passaporto di servizio a lettura ottica elettronico, nelle tipologie di passaporto di servizio, passaporto di servizio – funzionario internazionale e passaporto di servizio - corriere diplomatico”);
- Legislative Decree of 6 February 2007, no. 30 on the transposition of Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory of the Member States”, published in the Official Journal (O.J.) no. 72 of 27 March 2007;



- Law 68/2007 on the residence for short periods of foreigner nationals for visits, business tourism and study, published in the O.J. n. 126, of June 2007;
- Legislative Decree of 28 February 2008 amending and supplementing Legislative Decree of 6 February 2007, n. 30 transposing Directive 2004/38/EC concerning the right of citizens of the Union and their family member to move and reside freely within the territory of the Member States, published in the O.J. n. 52 of 1 March 2008;
- Ministerial decree no. 303/014 of 23 June 2009 on rules concerning the model and the security features of the normal e-passport (In Italian: Decreto ministeriale 23 giugno 2009 n. 303/014. Disposizioni relative al modello e alle caratteristiche di sicurezza del passaporto ordinario elettronico);
- Law no. 166 of 20 November 2009 converting legislative decree no. 135 of 25 September 2009 on compelling measures for the implementation of EU obligations and ECJ decisions (In Italian: Legge 20 novembre 2009, n. 166. Conversione in legge, con modificazioni, del decreto-legge 25 settembre 2009, n. 135, recante disposizioni urgenti per l'attuazione di obblighi comunitari e per l'esecuzione di sentenze della Corte di giustizia delle Comunità europee);
- Ministerial Decree no. 303/14 of 23 March 2010 on electronic passports, including rules on temporary passports (In Italian: Decreto ministeriale 23 marzo 2010, n. 303/14. Disposizioni relative ai libretti di passaporto temporaneo);
- Legislative Decree no. 71 of 3 February 2011 concerning the organization and functioning of consular offices, which as we will see are authorities in charge of issuing Italian passports abroad (In Italian: Decreto Legislativo 3 febbraio 2011, n. 71 – Ordinamento e funzioni degli Uffici consolari);
- Legislative Decree no. 89 of 23 June 2011 (on urgent provisions for the implementation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member-



States and of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals). In Italian: decreto-legge 23 giugno 2011, n. 89 “Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari”).

**WP 7 CIVIL RIGHTS
CASE-STUDY 7.6
ACCESS TO TRAVEL DOCUMENTS
HUNGARY**



NATIONAL REPORT FOR HUNGARY

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List of Abbreviations and Acronyms

BMBÁH*	Office of Immigration and Nationality
data protection commissioner	Hungarian Parliamentary Commissioner for Data Protection and Freedom of Information
district office	district (Budapest district) office of the Budapest and county government agency
EEA	European Economic Area
ETD	Emergency Travel Document
Fundamental Law, the	The Fundamental Law of Hungary (of 25 April 2011)
GD No. 101 of 1998	Government Decree No. 101 of 1998 (V. 22.) on the Implementation of Act No. XII of 1998 on Travelling Abroad
GD No. 114 of 2007	Government Decree No. 114 of 2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
GD No. 414 of 2015	Government Decree No. 414 of 2015 (XII. 23.) on the Rules of the Issuance of the Personal Identity Card and Standard Facial Image and Signature Recording
GD No. 86 of 1996	Government Decree No. 86 of 1996 (VI. 14.) on the Protection of Confidential Documents
Harmtv.*	Act No. II of 2007 on the Admission and Right of Residence of Third-Country Nationals
ID card	Permanent personal (national) identity card
KEKKH*	Central Office for Administrative and Electronic Public Services
Ket.	Act No. CXL of 2004 on the General Rules of Administrative Proceedings and Services
KSH*	Hungarian Central Statistical Office
Met.*	Act No. LXXX of 2007 on Asylum
Regulation, the	Council Regulation (EC) No. 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (O.J. 2004 L 385/1), as amended by Regulation (EC) No. 444/2009 of the European Parliament and of the Council of 6 May 2009 (O.J. 2009 L 142/1, and corrigendum in O.J. 2009 L 188/127).
Szmtv.*	Act No. I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence



TCN	third-country national
travel document for refugees	bilingual travel document for a person recognized as a refugee
Utv.*	Act No. XII of 1998 on Travelling Abroad

* official Hungarian abbreviation/acronym

PART I – TYPOLOGY AND FORMAT

Introduction

In order to assess the state of play with regard to potential obstacles in the access to and usage of travel documents, a logical first point of departure is to inquire which types are generally made available in the respective Member States, and whether those documents that fall within the ambit of Regulation 2252/2004/EC comply with the designated format there prescribed.²

Question 1 – Typology

- ✓ Which are the main types of travel documents that are in common usage in your country?

The Act No. XII of 1998 on Travelling Abroad (Utv.) decrees that, in the scope of the Act, the term “travel document” (*úti okmány*) shall include “personal passports, official passports, as well as official certificates, official instruments or other official documents defined in an international treaty or a Government Decree the use of which permits travelling abroad or returning therefrom.”³ We can distinguish between four categories thereof:⁴

(1) *passports*. A passport is an official certificate in the ownership of Hungary, which authentically proves its holder’s identity and nationality, as well as their right to travel to and return home from every country in the world.⁵ Passports themselves can be subdivided into two categories:⁶ (a) *official passports*: diplomatic, foreign service, service and seaman service passport,⁷ and (b) *personal passports*: (ordinary) personal passport, second personal passport and temporary personal passport.⁸

(2) *travel documents listed in GD No. 101 of 1998*:

- (a) emergency travel document (ETD),
- (b) travel document for refugees,
- (c) travel document for persons enjoying subsidiary protection (“oltalmazott”),⁹

² A commonplace assumption in EU law is that Regulations are applied uniformly, due to their direct applicability; this is however a matter that remains in need of empiric verification, since any actually present deviations might lead to hindrances that will still need to be addressed and eradicated.

³ Utv., s 4, item a)

⁴ Category 2 documents (primarily *laissez-passer* documents), and Category 3 documents (ID cards issued by Hungary) do not fall within the scope of the Regulation, pursuant to Art. 1(1) thereof. Nevertheless, in an attempt to provide a comprehensive picture of travel documents in Hungary, it is essential to offer information on all these categories where applicable and possible.

⁵ Utv., s 4, item b)

⁶ *ibid*, s 6.

⁷ *ibid*, s 11, p 1.

⁸ The second personal passport and the temporary personal passport are recognized in Utv., s 9, p 2 and s 10, p 1, respectively.

⁹ “Hungary shall grant subsidiary protection to a foreigner who does not satisfy the criteria of recognition as a refugee but there is a risk that, in the event of his/her return to his/her country of origin, s/he would

(d) travel document for beneficiaries of temporary protection (“menedékes”),¹⁰

(e1) travel document for third country nationals with immigrant or permanent resident status,¹¹ and (e2) travel document for stateless persons,

(f) travel document issued for a single journey (for refugees, persons enjoying subsidiary protection, or beneficiaries of temporary protection).

(3) *ID card*: a valid Hungarian ID card can be used for travelling abroad if: a) its owner enters the area of a EEA state, b) an international treaty or c) the domestic law of a non-EEA state grants them this possibility. In addition, Hungarian nationals enjoy the right to travel to countries identified by international treaties even after expiry of their travel document or ID card in case an international treaty allows of it.¹²

(4) *cross-border certificate* (“határátlépési igazolvány”): this document may be issued for Hungarian nationals whose tasks or services arising from an international treaty require that s/he cross the border regularly.^{13 14} Persons entitled thereto and the conditions of issuing it are defined in (various) international treaties.¹⁵

- ✓ Please verify whether the information that you are able to provide corresponds with that officially registered in the PRADO database (<http://www.prado.consilium.europa.eu/>) – so that we might verify whether the latter is perhaps inaccurate or no longer up to date.

The PRADO database does include both major categories of passports, as well as the travel document for refugees, the travel document for persons enjoying subsidiary protection, the travel documents for TCNs with immigrant or permanent resident status, the travel document for stateless persons, as well as ID card. Nevertheless, it:

be exposed to serious harm and s/he is unable or, owing to fear of such risk, unwilling to avail himself/herself of the protection of his or her country of origin.” Cf. Met., s 12, p 1.

¹⁰ “Hungary shall grant temporary protection to a foreigner who belongs to a group of displaced persons arriving in the territory of Hungary en masse which a) was recognised by the Council of the European Union as eligible for temporary protection under the procedure determined in Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [...], or b) was recognised by the Parliament as eligible for temporary protection as the persons belonging to the group had been forced to leave their country due to an armed conflict, civil war or ethnic clashes or the general, systematic or gross violation of human rights, in particular, torture, cruel, inhuman or degrading treatment.” Cf. Met. s 19.

¹¹ It is also colloquially known as “alien’s passport” or “aliens passport”.

¹² Utv. s 1, p 3, p 4

¹³ GD No. 101 of 1998, s 8, p 1

¹⁴ Utv., s 41, p 1, item b) provides that the Government is authorized to decree the types of travel documents other than the passport. GD No. 101 of 1998, s 1, item b) stipulates that “[t]his Decree shall [...] define the types of travel documents other than the passport”, suggesting that every travel document possibly issued by Hungary is listed in the GD. As for the cross-border certificate, it should be noted that according to s 2, p 2 of the Decree, „[U]nless an international treaty provides otherwise, the rules described in the Decree shall apply to the right to, the application for, as well as the right to possess the cross-border certificate”, implying that the Government differentiates between travel documents *de iure* and the cross-border certificate, whereas the official website of the KEKKH mentions the latter among other travel documents (cf. http://www.nyilvantarto.hu/hu/fogalmak_utlevel).

¹⁵ GD No. 101 of 1998, s 8, p 2

- does not offer an official English translation for “official passports”;
- fails to enumerate the three different types of personal passports, contrary to official passports the three types of which are easily distinguishable;
- fails to include the ETD, the travel document for beneficiaries of temporary protection, and the cross-border certificate;
- is inaccurate regarding the travel document issued for a single journey. Although the wording of the PRADO website suggests that it can be issued to any non-Hungarian national, it may only be given to refugees, persons enjoying subsidiary protection and beneficiaries of temporary protection, as well as TCNs with immigrant or resident status or stateless persons;¹⁶
- shows inconsistency as regards ID cards. It is debatable why ID cards numbered HUN-HO-09001, HUN-HO-09002 and HUN-HO-09003 are in category J (Residence-related documents), and not in category B (Identity cards).¹⁷

Question 2 – Domestic follow-up rules to the main EU instrument

- ✓ Were any specific measures enacted in your country to give further effect to the main EU instrument regulating travel documents, i.e. Regulation 2252/2004/EC?
- ✓ If so, please identify the relevant act(s)/law(s) and describe their location within the domestic legal hierarchy.

Hungarian transposition of the Regulation, amended by Regulation 444/2009/EC,¹⁸ has been completed through the adoption and/or amendment of the following laws:¹⁹

- **Government Decree No. 86 of 1996 (VI. 14.) on the Protection of Confidential Documents**
- **Act No. XII of 1998 on Travelling Abroad (“Utv.”)**
- **Government Decree No. 101 of 1998 (V. 22.) on the Implementation of Act No. XII of 1998 on Travelling Abroad**
- **Decree No. 37 of 1998 (VIII. 18.) of the Minister of the Interior on the Implementation of Act No. XII of 1998 on Travelling Abroad**
- Act No. XXI of 2006 amending Act No. XII of 1998 on Travelling Abroad
- Government Decree No. 197 of 2006 (IX. 27.) amending Government Decree No. 101 of 1998 (V. 22.) on the Implementation of Act No. XII of 1998 on Travelling Abroad

¹⁶ Issuing such a document for TCNs with immigrant or resident status or stateless persons is possible pursuant to s 82, p 1 and s 84 of Harmtv. GD No. 101 of 1998, s 2, p 1, item e), which establishes the travel documents issued for these two groups does not explicitly refer to this option.

¹⁷ Since GD No. 414 of 2015, s 7, p 1 rules that ID cards can be issued to Hungarian nationals, TCNs with immigrant or resident status, refugees and persons enjoying subsidiary protection as well, these three ID cards might be the ones issued for the latter three groups, although no evidence in PRADO supports it.

¹⁸ The Utv. and Government Decree No. 117 of 2009 also served as instruments to introduce Regulation 444/2009 to Hungarian law.

¹⁹ Laws in bold refer to those still in force, as of 31 December 2015.

- Decree No. 23 of 2006 (IX. 27.) of the Ministry of Justice and Law Enforcement amending Decree No. 37 of 1998 (VIII. 18.) of the Minister of the Interior on the Implementation of Act No. XII of 1998 on Travelling Abroad
Act No. CXIII of 2008 amending Act No. XII of 1998 on Travelling Abroad and Other Acts on Other Documents Usable for Travelling Abroad
- Government Decree No. 117 of 2009 (VI. 04.) amending Government Decrees in connection with Act No. CXIII of 2008 amending Act No. XII of 1998 on Travelling Abroad and Other Acts on Other Documents Usable for Travelling Abroad

According to the database of the Ministry of Justice, all legal approximation processes related to the two Regulations were successfully closed.²⁰

As far as legal hierarchy is concerned, the Fundamental Law forms the basis of Hungary's legal system,²¹ and also provides for the hierarchy of the sources of law. No law, including Acts of Parliament, may be contrary to the Fundamental Law;²² Government Decrees must not be contrary to Acts of Parliament,²³ whereas Decrees of Members of Government, including Ministerial Decrees, may not contradict Acts of Parliament, Government Decrees or Decrees of the President of the National Bank of Hungary.²⁴ Specifying these rules to the laws above, Acts of Parliament stand above Government Decrees which, in turn, stand above Ministerial Decrees.

Question 3 – Conformity with applicable standards and requirements

Please verify whether the standards and requirements for (issuing) passports and travel documents adhered to in your country comply with those prescribed in Regulation 2552/2004/EC, including the requirements and pointers contained in its Annex.

In particular:

- ✓ Do the standards and requirements imposed refer to the mandatory inclusion of fingerprints in an interoperable format?
- ✓ Have the biometric features prescribed by the Regulation been integrally introduced for the passports and travel documents issued in your country?²⁵

Of the categories of travel documents listed above, the Regulation only applies to Category 1 (passports) and Category 4 (cross-border certificates).²⁶ The answer is structured along the five distinguishable criteria of the Regulation.

(1) *adoption of minimum security standards* (Art 1(1) of the Regulation). The scope of Government Decree No. 86 of 1996 on the Protection of Confidential Documents

²⁰ Cf. <http://jogharmonizacio.gov.hu/>.

²¹ The Fundamental Law, ch Foundation (“Alapvetés”), art R, p 1

²² *ibid*, art T, p 3

²³ *ibid*, art 15, p 4

²⁴ *ibid*, art 18, p 3

²⁵ Please find the answers to the two specific questions in points (3) and at the end of the answer.

²⁶ *supra*, note 10

extends to both passports and cross-border certificates.²⁷ The law encompasses three general measures as well as a specific one. a) Confidential documents must be provided with a chemical, physical, technological, technical as well as administrative protection which can adequately prevent counterfeiting and ensure the rapid recognition thereof; in addition, those including an information technology (IT) data storage medium must also be given a document IT protection. b) Moreover, these documents must be processed pursuant to the regulations on warrants subject to a strict accountability obligation, from the beginning of issuance until the termination of production, and c) must be given a press masthead, which is capable of identifying the producer and the exact time of the production with clarity.²⁸ In addition, since the passport features an IT data storage medium which, in turn, contains a biometric data (in this case), the IT security solution must be built on a public key infrastructure.²⁹ Besides, the storage of personal data in the storage medium must be guaranteed with such technical measures which ensure at the highest level possible that unauthorized persons should not access its content.³⁰

(2) *they shall be individual documents* (Art 1(1)). Passports, as seen in their definition as “official certificates”,³¹ are issued as individual documents. Cross-border certificates are also *per definitionem* documents.³²

(3) *inclusion of biometric data (facial image, fingerprints)* (Art 1(2)): a) The “data side” of the Hungarian passport features a facial image of the owner.³³ b) Also, “passports, apart from temporary personal passports of a validity of 12 months or less, shall include a storage medium containing a biometric identifier”,³⁴ which “shall include the biometric data as prescribed in the second sentence of Art 2(2) of Regulation 2252/2004/EC in digital form”.³⁵ Simultaneously, it ought to be indicated that neither the Utv. nor Hungarian law in general does mention the inclusion of fingerprints in an interoperable format *expressis verbis*; it simply alludes to the relevant parts of the Regulation. The Act also specifies the circle of persons whose second biometric data need not be included in the storage medium: 1. if a directly applicable Community (EU) legal act allows of it, 2. persons temporarily physically incapable of producing their second biometric data upon application, or 3. applicants whose health condition renders personal appearance impossible at the time of their application, provided that their

²⁷ GD No. 86 of 1996, s 1, item 3. establishes that a confidential document shall be an official document in direct or indirect connection with natural and legal persons, objects or entities which authentically proves the identity of its owner (holder), or enables them to practise rights and fulfil duties, and the unlawful or improper use of the document might constitute a serious violation of national security, public security, criminal policy, administrative or other national economy interests. Annex 1, part I, items 1, 2 and 4 explicitly extend the *ratio materiae* of this Decree to the personal passport, all types of official passports, and confidential documents substituting passports and issued used as travel documents, respectively, whereas part III, item 1.1. refers to documents authorizing to travel abroad, return home and cross the border which are prescribed by law, and different than those in part II.

²⁸ *ibid*, s 5, p 1

²⁹ *ibid*, s 6/C, p 2

³⁰ Utv., s 32/A, p 2

³¹ *ibid*, s 6

³² *supra*, note 19

³³ Utv., s 7, p 1, item a)

³⁴ *ibid*, s 7, p 2

³⁵ *ibid*, s 7, p 4

doctor certifies it.³⁶ These exceptions serve as a somewhat restrictive interpretation of the exceptions *rationis personae* found in Art 1(2a) of the Regulation. As regards cross-border certificates, a facial image *is* required, whereas fingerprints are not included, and the picture is not a digital one, either.³⁷

(4) *biometric identifiers should be taken by qualified and duly authorised staff* (Art 1a(1)). Qualification for the “Passport Requests Administrative Competence” signifies either (1) a jurist degree, (2) a higher education degree in the field of public administration and social administration or law enforcement, or (3) a university or college level education and registry and document officer qualification for Class I³⁸ public servants, whereas for those in Class II, (1) secondary school education and economist qualification, or (2) secondary school education and registry and document officer or IT qualification is necessary (as defined in the National Qualification Register).³⁹ Proper authorization is ensured through the duty of the petitioner to provide their second biometric data to the passport office upon application.⁴⁰ These norms also apply to the cross-border card as default rules.⁴¹

(5) *fundamental rights* (Art 1a(2)). Articles 6 and 13 of the ECHR, ensuring the right to a fair trial and the right to an effective remedy, respectively, are guaranteed in the proceeding because the Act No. CXL of 2004 on the General Rules of Administrative Proceedings and Services (Ket.) is applicable in passport requests. Ket. provides, among others, the right to appeal before an authority on any ground the applicant wishes,⁴² as well as the right to judicial review.⁴³ The Utv. strengthens this safeguard, since in proceeding related to passports, the court has to decide without further delay.⁴⁴

The right to privacy, as defined in Art 8 of ECHR, is ensured through various distinct rights. Applicants and passport owners also enjoy the right to verify the data within the storage medium at the district office or the consular office (Art 4(1)),⁴⁵ although the Act suggests that it does *not* confer on them the right to have another passport issued.⁴⁶ The applicant can furthermore request information on their own data processed by the

³⁶ *ibid*, s 7, p 4, items a–c

³⁷ Pursuant to Utv., s 5, p 2, travel documents which are introduced by an international treaty shall include data defined in said international treaty. See, for example, Act No. CXIV Promulgating the Agreement between the Republic of Hungary and the Republic of Slovakia on the Control of the Road, Rail and Water Transport Border Traffic (Pozsony, 9 October 2003). In this Act, Annex, item 5. only specifies that the petitioner must provide a photograph, whereas there is no mention of fingerprints.

³⁸ Class I includes public servants with a higher education degree, whereas those with only secondary school education fall within Class 2. Cf. Act CXCIX of 2011 on Public Servants, s 131, p 8.

³⁹ Government Decree No. 29 of 2012 on the Qualification Prescriptions of Public Servants, Annex 3, item 128. According to s 2, only those who possess any one of the qualifications required for the exercise of a given administrative competence defined in Annex 1 can be vested with competence in that field.

⁴⁰ GD No. 101 of 1998, s 17, p 1

⁴¹ *ibid*, s 2, p 2

⁴² Ket., s 98, p 1

⁴³ *ibid*, s 109, p 1

⁴⁴ Utv., s 22, p 3

⁴⁵ GD No. 101 of 1998, s 7, p 2, item h), as well as p 3, item h)

⁴⁶ Utv., s 20, p 2 establishes that „The validity of the travel document is unaffected by the lack or inadequacy of the data from Section 7, paragraphs 2–3.” This will be revisited in Question 7.

passport authority,⁴⁷ as well as ascertain if they have been the subject of any data processing,⁴⁸ and can ask for an official instrument issued on any data registered by the passport authority.⁴⁹ Additionally, the right to privacy and informational self-determination are protected via limitations imposed on (passport) authorities when processing biometric identifiers (Art 4(1)). Article 8 of the ECHR enshrines the right to privacy, as well as the case *S. and Marper v. the United Kingdom* (Grand Chamber Judgment of 4 December 2008) which reiterated that it is essential to have clear, detailed rules governing the scope and application of measures and minimum safeguards related to personal data processing.

- The Central Office for Administrative and Electronic Public Services (KEKKH) is the central data processing organ,⁵⁰ and is authorized to process data exclusively in cases defined by an Act of Parliament (which is positioned above all other sources of law in the legal hierarchy, apart from the Fundamental Law).⁵¹
- The passport office or the consular officer vested with administrative competence might receive data solely in order to identify the applicants' personal data and home address as well as to verify if they have the right to travel.⁵²
- KEKKH is authorized to disclose data to authorities proceeding in criminal matters, police (such as to allow them to prevent unlawful travelling abroad, and to identify the person⁵³) the national security services, the customs and investigating organs of the National Tax and Customs Agency, the criminal register organs, the pension insurance office, the minister in charge of citizenship matters, offices proceeding in citizenship matters, aliens policing authorities as well as refugee offices,⁵⁴ but only so that they can exercise their duties defined by an Act of Parliament. In these cases, as well receipt of statistical data (which must exclude the possibility of identification),⁵⁵ these data cannot be forwarded.⁵⁶ KEKKH can also provide data for agencies preparing or proceeding in misdemeanors⁵⁷ and correctional facilities for identification purposes.⁵⁸ In addition, both KEKKH and the passport office are authorized to disclose data to the personal data and address registry organ, for the same aim.⁵⁹ Personal data can also be sent abroad if provided in an international treaty, including to international organizations, and if the conditions of data processing are met abroad as well.⁶⁰

⁴⁷ *ibid*, s 28, p 2a

⁴⁸ *ibid*, s 29, p 1.

⁴⁹ *ibid*, s 28, p 2b

⁵⁰ *ibid*, s 24, p 1, item b)

⁵¹ *ibid*, s 24/A, p 1, item c)

⁵² *ibid*, s 26, p 1, items b–c)

⁵³ *ibid*, s 27, p 3

⁵⁴ *ibid*, s 27, p 1, as well as p 3

⁵⁵ *ibid*, s 28, p 3

⁵⁶ *ibid*, s 32/A, p 1, item d)

⁵⁷ *ibid*, s 27, p 1a

⁵⁸ *ibid*, s 27, p 9

⁵⁹ *ibid*, s 27, p 4

⁶⁰ *ibid*, s 28, p 4

- KEKKH may also disclose the facial image of a person for anyone (be they a natural person, legal person, or a firm without a legal personality), by force of an Act, or if the applicant/owner has given their consent, upon certifying the purpose and legal basis for the use of data.⁶¹

There are also rules for the timeframes of processing personal data, both in general, and specifically biometric data. *Generally*, passport and participating authorities are entitled to process the data until the proceeding finishes; official documents produced during the proceedings must be kept for one year after expiry.⁶² KEKKH, as the central data processing agency is entitled to data processing five years after expiry.⁶³ In addition, the personal and passport data of persons holding an official passport shall be processed until withdrawal due to loss of entitlement.⁶⁴

Rules on biometric data include the following:

- in case the applicant provided a written consent upon collecting the data, the passport authority may process them (aiming to replace a lost, misappropriated or destroyed passport, or to issue the second personal passport) until expiry of the travel document; *without* such consent, only until issuance;
- the cross-border traffic control of the police may only read them from the storage medium, for the purposes of Art 4(3) of the Regulation;
- the authority designated by the government may only read from the storage medium, with the objective of checking the content of the storage medium.⁶⁵

Children's rights are touched upon indirectly. The legislation on travel documents only mentions that their application needs to be lodged by their legal representative,⁶⁶ and consent from the parent (legal guardian) must be provided.⁶⁷ Safeguarding the rights listed in the CRC is made possible through considering Hungarian sources of law, such as Act No. CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (Ebkvt.), or Act No. V of 2013 on the Civil Code. Ebkvt. prohibits the Hungarian State, thereby authorities, from discriminating on several grounds which are also identified in CRC, Art 2,⁶⁸ whereas Book Four of the latter regulates parental supervision. Such dispositions include that it must be practised with a view to the child's physical, intellectual and moral development⁶⁹ (CRC Art. 27(1)), or the limitation thereof in order to protect the best interest of the child (CRT Art. 3(1)).⁷⁰

⁶¹ *ibid*, s 28, p 1, item d)

⁶² *ibid*, s 30, p 1–2

⁶³ *ibid*, s 31, p1, items a–b)

⁶⁴ Utv., s 32, items a–d) specify that for diplomatic passports of Members of the European Parliament, Members of the Parliament, nationality spokespersons as well as those of the co-habiting spouse and dependent child who travels with them for official purposes, shall be processed by the Office of the National Assembly; for diplomatic and external service passports, it is the minister in charge of foreign policies; for service passports, the organ which suggested issuing the passport; for seaman service passports, it is the firm verifying the seaman service, respectively.

⁶⁵ Utv., s 32/A., p 1, items a–c), respectively

⁶⁶ GD No. 101 of 1998, s 15, p 2

⁶⁷ *ibid*, s 17, p 3

⁶⁸ Ebkvt., s 4, item a)

⁶⁹ Act No. V of 2013 on the Civil Code, s 4:147, p 1

⁷⁰ *ibid*, s 149

In conclusion, the biometric features have been integrally introduced for passports, and most of the requirements of the Regulation have also been transposed in the law.⁷¹

- ✓ Did your Member State designate a specific body for printing passports and travel documents? Please check whether that name was subsequently communicated to the Commission, and also indicate if the same body was designated by another Member State.

There is no single organ responsible for issuing passports or travel documents.⁷² First-instance authorities for official proceedings in connection with passports and travel documents are listed in GD No. 101 of 1998 as follows:

- KEKKH: personal passports, service and seaman service passports; cross-border certificates;⁷³
 - the minister in charge of foreign policies: diplomatic and foreign service passports;⁷⁴
 - the consular officer: temporary personal passports.^{75,76}
- ✓ Have the technical specifications referred to in Article 2 of the Regulation been published, or are they (in line with Article 3) kept confidential?

These specifications are kept confidential in Hungarian law, apart from the very scarce and general norms listed in the first part, paragraph (1) of this Answer.

⁷¹ Besides the legal provisions, the homepage of the Hungarian government also mentions that Hungary has completely transitioned to issuing passport with biometric data, and it no longer issues any other types of passports since 29 August 2006 (cf. <http://www.nyilvantarto.hu/hu/utlevel>).

⁷² It is worth mentioning that KEKKH seems to wield the most competence in this field. Government Decree No. 276 of 2006 on the Formation, Scope of Duty and Authority of the Central Office for Administrative and Electronic Public Services, s 6, p 1 establishes that it is data processing agency for travel documents. In addition, passports are “personalized”, and the storage unit is filled in with data by the KEKKH, pursuant to GD No. 101 of 1998, s 3, p 2, item f), even if the authority collecting the biometric data is the one the applicant lodges their submission to (*ibid*, s 13, p 2)

⁷³ GD No. 101 of 1998, s 3, p 1

⁷⁴ *ibid*, s 4, p 1, item a)

⁷⁵ *ibid*, s 4, p 2, item a)

⁷⁶ The consular officer is responsible for travel documents issued for a single journey (for refugees, persons enjoying subsidiary protection or beneficiaries of temporary protection), single-entry travel documents for TCNs with immigrant or permanent resident status upon loss or destruction of their travel document abroad (GD No. 101 of 1998, s 4, p 2, items a), c), and d)) as well as ETDs (Act No. XLVI of 2011 on Consular Protection, s 5, p 2, item a). The local organ of the BMBÁH, based on, respectively, permanent or temporary residence (GD No. 101 of 1998, s 5, p 1) issues travel documents to a TCN with immigrant or permanent resident status, and travel documents for stateless persons. It also issues the travel document for refugees, the travel document for persons enjoying subsidiary protection and the travel document for beneficiaries of temporary protection, based on the permanent residence. (*ibid*, s 6, p 1). As for ID cards, KEKKH shares concurring competence with the district office, the one-stop government window (“kormányablak”), out of which the district office is tasked with issuing the card (or the refusal thereof) (GD No. 414 of 2015, s 2). The role of KEKKH is also asserted in Government Decree No. 276 of 2006 on the Formation, Scope of Duty and Authority of the Central Office for Administrative and Electronic Public Services, s 5, p 1.

Question 4 – Validity

- ✓ What is the general period of validity of (the different types of) travel documents that are in common usage in your country?

Type of document	General period of validity
(1) <i>Passports</i>	
(ordinary) personal passport	<p>If the applicant is:</p> <ul style="list-style-type: none"> • under 6 years of age: 3 years. • between 6 and 70 years: 5 years or 10 years (the latter must be requested)⁷⁷ • over 70 years: 10 years.⁷⁸
second personal passport	<ul style="list-style-type: none"> • until the owner practices the profession requiring the passport, but a maximum of 2 years • if requiring special consideration: a maximum of 1 year.⁷⁹
temporary personal passport	<ul style="list-style-type: none"> • a maximum of 1 year (if the objective is to prolong the stay abroad, to travel further or home; and if it is required because the passport or ID card has become incapable of identifying its owner, been damaged, expired, lost, misappropriated, and it is impossible to issue a personal passport) • a maximum of 6 months (necessarily; solely for returning to Hungary; under the conditions listed above) • a maximum of 6 months <i>ex officio</i> for Hungarian nationals not in possession of an ID card, and who are under a resolution of prohibition of leaving the foreign country, as well as Hungarian nationals ordered by the competent authorities to exit the area of another state, and who possess neither a valid passport nor an ID card.⁸⁰

⁷⁷ Utv., s 8, p 2

⁷⁸ Utv., s 8, pp 1–2

⁷⁹ *supra*, s 9, p 3

⁸⁰ *supra*, s 10, pp 1–3

official passports	the duration of the assignment (legal relationship), but a maximum of five years. ⁸¹
passports issued under Utv., s 7, p 4, items b–c) (the second biometric data is not included, in case of persons temporarily physically incapable of producing it upon application, or applicants whose health condition renders personal appearance impossible at the time of their application, provided that their doctor certifies it. ⁸²	1 year. ⁸³
<i>(2) travel documents listed in GD No. 101 of 1998</i>	
emergency travel document (ETD)	<i>“[...] barely longer than the minimum period required for completion of the journey for which it is issued. In calculating this period, allowances should be made for necessary overnight stops and for making travel connections.”⁸⁴</i>
travel document for refugees	1 year. ⁸⁵
travel document for a person enjoying subsidiary protection	1 year. ⁸⁶
travel document for beneficiaries of temporary protection	6 months. ⁸⁷
travel document for a third country national with immigrant or permanent resident status	<ul style="list-style-type: none"> • solely for return to Hungary.⁸⁸ • 1 year.⁸⁹
travel document for a stateless person	<ul style="list-style-type: none"> • solely for return to Hungary.⁹⁰ • 1 year.⁹¹
travel document issued for a single	solely for return to Hungary. ⁹²

⁸¹ *supra*, s 11, p 1

⁸² *ibid*, s 7, p 4, items a–c

⁸³ *ibid*, s 7, p 5

⁸⁴ 96/409/CSFP Decision of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document, Annex II, item 4

⁸⁵ GD No. 101 of 1998, s 11/A, p 1

⁸⁶ *ibid*, s 11/A, p 1

⁸⁷ *ibid*, s 11, p 1

⁸⁸ Harmtv., s 82

⁸⁹ *ibid*, s 83, p 2

⁹⁰ *ibid*, s 82

⁹¹ *ibid*, s 85, p 2. The regulation is pursuant to Act No. II of 2002 on the publication of the United Nations Convention relating to the Status of Stateless Persons (New York, 28 September 1954), Annex, item 5., which lays down the validity of the travel document as between 6 months and 2 years.

<p>journey (for refugees, persons enjoying subsidiary protection as well as beneficiaries of temporary protection).</p>	
<p>(3) <i>ID card</i></p>	
<p>ID card</p>	<p>General rules: if the recipient is</p> <ul style="list-style-type: none"> • under 12 years of age: 3 years from the date of issuance, but not exceeding the date of reaching 12 years of age • between 12 and 18 years: 3 years from the date of issuance • over 18 years of age: 6 years from the date of issuance.⁹³⁹⁴ <p>Special provisions:</p> <ul style="list-style-type: none"> • those above 65 years of age: there is a possibility to ask for an ID card with no expiry date. Such an ID card does not contain a storage medium.⁹⁵ • TCNs with resident status: following the general rules, but not exceeding the validity prescribed in their residence permit, temporary residence permit, national residence permit or EC residence permit.⁹⁶ • if the person (1) is suspected of having committed an offence described in Act No. C of 2012 on the Penal Code, ss 314–316, or Act No. IV of 1978, s 261, pp 1–7 and 9, or has been sentenced to imprisonment because of such, (2) is consequently under a prohibition of leaving the country, and (3) there are at least three further months left from the punishment, the person must be given an ID card featuring this prohibition. Such an ID card is valid at most until the prohibition terminates.⁹⁷

⁹² GD No. 101 of 1998, s 2, p 1, item f)

⁹³ Act No. LXVI of 1992 on the Registration of the Personal Data and Home Address of Citizens, s 29/E., p 1, items a–c)

⁹⁴ ID cards for naturalized Hungarian citizens shall be valid from the date of acquisition of Hungarian citizenship. Cf. *ibid*, s 29/E., p 3

⁹⁵ *ibid*, s 29/E., p 2

⁹⁶ *ibid*, s 29/E., p 4

⁹⁷ *ibid*, s 29/G., p 2

(4) <i>cross-border card</i>	
cross-border card	five years (unless the relevant international treaty decrees otherwise) ⁹⁸

- ✓ Is prior (individual) warning issued to the bearer with regard to imminent expiry, and the need to renew the document(s) in question (e.g. via letter or e-mail notice)?

In the case of the diplomatic passports issued for members of the European Parliament, members of the National Assembly, national spokespersons, or the spouse or child thereof, the Office of the National Assembly; in the case of service passports given to persons defined in Utv., s 14, p 4, the organ which suggested the issuance of the passport; in the case of other official passports, the organ which ordered the journey is in charge of notifying the holder of the passport fifteen days in advance, of the exact date of expiry, the obligation to pass it in and the deadline thereof, as well as the legal consequences of failing to do so.⁹⁹ No such regulation exists for other travel documents.

PART II – ACQUISITION, RENEWAL AND LOSS

Introduction

Next, we take interest in collecting information with regard to the acquisition process, on where and how the documents are to be procured, and at what price. Equally worthy of note will be any possible deviations applied in the situation of renewal or loss, including withdrawal, since these might prove more protracted, costly, or otherwise pose hindrances. We first focus on the situation for own nationals and then consider the situation for resident EU citizens.

Question 5 – Venue, costs and timeframe

- ✓ At which office in your country are travel documents ordinarily to be obtained? Please include in your answer details on whether or not an application can be made digitally (even when the documents still have to be picked up in person).¹⁰⁰

5.1. VENUES

⁹⁸ GD No. 101 of 1998, s 8, p 4

⁹⁹ *ibid*, s 25, pp 2–2a

¹⁰⁰ For a detailed list of the different bodies responsible for first degree proceedings related to travel documents, please consult Question 3. Since these offices do not always match the ones to which the applicant must submit their application, it is essential to treat them separately.

5.1.1. Passports, *de iure* travel documents¹⁰¹ and the cross-border certificate (Categories 1, 2 and 4)

<i>Type of document</i>	<i>Where to apply?</i>
(1) Passport	
personal passport, second personal passport	<i>if in Hungary:</i> district office, or KEKKH. <i>if abroad:</i> consular officer.
temporary personal passport	consular officer. ¹⁰²
service and seaman service passports (as well as personal passport, second personal passport, service and seaman service passport to be issued forthwith, as well as personal and second personal passports in urgency proceedings)	district office, or KEKKH.
personal passport and second personal passport in immediate proceedings	KEKKH.
diplomatic and foreign service passport	minister in charge of foreign policies, or consular officer.
temporary personal passport	consular officer.
(2) Other travel documents (in Government Decree No. 101 of 1998).	
ETD	diplomatic or consular representation of any other EU Member State. ¹⁰³
travel document for refugee, travel document for persons enjoying subsidiary protection, travel document for beneficiaries of temporary protection.	local organ of the BMBÁH, according to the permanent residence of the petitioner.
travel documents to a TCN with immigrant or permanent resident status; travel document for stateless persons.	local organ of the BMBÁH, according to, respectively, permanent or customary residence of the petitioner.
travel document issued for a single journey (for refugees, persons enjoying subsidiary protection as well as beneficiaries of temporary protection).	foreign service of Hungary.
(4) Cross-border certificate	
cross-border certificate	KEKKH. ¹⁰⁴

The petitioner has to submit the application in person,¹⁰⁵ with the following exemptions:¹⁰⁶

¹⁰¹ If not said otherwise, the authorities in the table are listed pursuant to GD No. 101 of 1998, s 14, p 1, items a–h), respectively.

¹⁰² GD No. 101 of 1998, s 14, p 1, item e)

¹⁰³ GD No. 101 of 1998, s 10/B, p 1

¹⁰⁴ *ibid*, s 14, p 2

¹⁰⁵ *ibid*, s 15, p 1

¹⁰⁶ *ibid*, s 15, pp 2–5, respectively

- the legal representative lodges the application on behalf of minors or persons placed under conservatorship, although the physical presence of the applicant is still required unless they are minor and their passport need not contain the second biometric data,
- physical appearance is impossible due to their health condition, verified by a physician. The petitioner needs a legal representative.
- in case of persons living or residing abroad, if appearance before the consular officer incurs a disproportionate burden on them, they may submit their application via post (for passports which do not include fingerprints, or temporary personal passports not issued *ex officio*).
- if, pursuant to s 32/A., p 1, item a) of Utv., the petitioner consented to the storage of his/her biometric data, in case of loss, appropriation or destruction of a travel document containing the storage medium, application for the new travel document or the second personal passport can be performed online until the date of expiry of the original document. *Other than this case, no passport or travel document can be applied for online.*

The travel document can be collected in four different ways:

- at the district office (personally, or through a legal representative or an agent). (Travel documents produced in urgency or immediate proceedings can only be obtained in this way.¹⁰⁷)
- if the petitioner is abroad, from the consular officer or via the post;
- at the passport office;
- if in Hungary, via post.¹⁰⁸

5.1.2. ID cards

ID cards can be applied for at any district office in Hungary and the KEKKH,¹⁰⁹ and the applicant is obliged to appear in person.¹¹⁰

Special provisions are as follows:

- those whose personal appearance is hindered due to health reasons may submit the application at the notary of the municipal government according to their permanent residence or customary residence, which then forwards it to the district office.¹¹¹ If the physician certifies that they are unable to appear in person, the applicant can even send a legal representative instead.¹¹²
- those who are imprisoned or are in custody may lodge their request at the correctional facility which then forwards it to the KEKKH.¹¹³

¹⁰⁷ GD No. 101 of 1998, s 23, p 2, items a–d), respectively

¹⁰⁸ According to GD No. 108 of 1998, s 23, p 2, the applicant must have chosen the way of completion him- or herself.

¹⁰⁹ GD No. 414 of 2015, s 11, p 1

¹¹⁰ *ibid*, s 12, p 1

¹¹¹ *ibid*, s 11, p 3

¹¹² *ibid*, s 12, p 2

¹¹³ *ibid*, s 11, p 4

- on behalf of newborn Hungarian citizens born in Hungary, the legal representative can submit the application to the registrar registering the birth without appearance in person, which is then forwarded to the district office.¹¹⁴

Consequently, ID card cannot be applied for online.

The ID card can be obtained in the following ways:¹¹⁵

- if a temporary ID card is being issued, or the client still possesses their former, valid ID card: at the district office or KEKKH,
- if in Hungary: via post, or it might be given to the applicant, their legal representative or their agent in the district office or KEKKH,
- for those in correctional facility: it is to be posted to the facility.

5. 2. COSTS

- ✓ Which costs are associated with the acquisition of the different types of travel documents issued in your country? Please distinguish between the various categories, where appropriate, and convert any sums in other currencies, where applicable, to EUR.

The primary legal basis for these fees is Act No. XCIII of 1990 on Fees (Itv.). Chapter IX, Part I of the Annex of the Act enumerates the fees related to travel documents, while Part II includes the fees for personal identity cards. In the table below, unless the footnote says otherwise, “Legal basis” refers to Chapter IX, Part I of the Annex of the Itv.

5.2.1. Costs related to travel documents

	Type of travel document	Fee (HUF) ¹¹⁶	Legal basis
	(1) Passports		
1	personal passport (if validity is below 10 years)	7500	item 1.
2	personal passport (if validity is 10 years)	14000	item 1.
3	personal passport (for people below 18 or above 70 years of age, or if validity is 1 year)	2500	item 1.
4	personal passport (for a child if their legal representative raises three or more underage children in their household)	500	item 1a., sub-item a)
5	personal passport (for a child if	1250	item 1a., sub-item b)

¹¹⁴ *ibid*, s 13, p 2

¹¹⁵ *ibid*, s 24, pp 2–4

¹¹⁶ The official HUF/EUR rate moves between 300 and 315. Cf. the database of the National Bank of Hungary: <https://www.mnb.hu/statisztika/statisztikai-adatok-informaciok/adatok-idosorok/vii-arfolyam>.

	their legal representative raises two underage children in their household)		
6	second personal passport	the double of the ordinary personal passport fee (item 1.)	item 2.
7	personal passport and second personal passport to be issued forthwith	the ordinary (or doubled) passport fee + 19000	item 3. + Decree No. 69 of 2011 of the Minister of the Interior on the Administrative Service Surcharge for Issuing Personal Passports in Forthwith, Urgency and Immediate Proceedings, Annex 1, item I.
8	personal passport and second personal passport in urgency proceedings	the ordinary (or doubled) passport fee + 29000	item 3. + <i>ibid</i> , item II.
9	personal passport and second personal passport in immediate proceedings	the ordinary (or doubled) passport fee + 39000	item 3. + <i>ibid</i> , item III.
10	diplomatic/foreign service passport	none	item 7., sub-item a-b)
11	service passport, seaman service passport	7500	item 1.
12	service and seaman service passport (for 1 year)	2500	item 1.
<i>(2) Other travel documents (in GD No. 101 of 1998)</i>			
13	ETD: <ul style="list-style-type: none"> • issued in Hungary • issued abroad 	<ul style="list-style-type: none"> • 4000 • 30 EUR 	<ul style="list-style-type: none"> • Decree No. 28 of 2007 of the Minister of Justice and Law Enforcement on the Procedural Fees Related to the Admission and Residence of Persons with the Right of Free Movement and Residence and Third-Country Nationals, Annex 2, List IV,

			<p>item 8.</p> <ul style="list-style-type: none"> • notice of the Consular Service of Hungary¹¹⁷
14	travel document for refugees, persons enjoying subsidiary protection and beneficiaries of temporary protection ¹¹⁸	2500 ¹¹⁹	item 1.
15	travel document for a TCN with immigrant or permanent resident status; travel document for a stateless person	<ul style="list-style-type: none"> • general fee for both groups: 5000 • extension of validity of the travel document for a stateless person: 3000. • substitution of travel document for a stateless person: 4000. • replacement of travel document for a stateless person: 3000. • substitution of travel document for a TCN with immigrant or permanent resident status: 5000. • replacement of travel document for a TCN with immigrant or permanent resident status: 4000. 	<ul style="list-style-type: none"> • Decree No. 28 of 2007 (V. 31.) of the Minister of Justice and Law Enforcement, items 1. and 5. • <i>ibid</i>, item 2. • <i>ibid</i>, item 3. • <i>ibid</i>, item 4. • <i>ibid</i>, item 6. • <i>ibid</i>, item 7.
16	travel document issued for a single journey (for refugees,	4000	<i>ibid</i> , item 8.

¹¹⁷ Please consult any of the spreadsheets on the website of the Consular Service of Hungary: <http://konzuliszolgalat.kormany.hu/konzuli-dijak>.

¹¹⁸ Met., s 17, p 1 extends the rights and obligations of the refugee to the person enjoying subsidiary protection.

¹¹⁹ According to Law Decree No. 15 of 1989 on the Promulgation of the Convention Relating to the Status of Refugees of 28 July 1951, and the Protocol Relating to the Status of Refugees of 31 January 1967, Annex, Paragraph 3, “The fees charged for issue of [the travel document for a refugee] shall not exceed the lowest scale of charges for national passports.” Hungary has failed to respect this provision, since as of 1 January 2016, the lowest fee for national passports is HUF 500.

	persons enjoying subsidiary protection as well as beneficiaries of temporary protection, TCNs with immigrant or resident status or stateless persons), if issued in Hungary		
	(3) <i>ID cards</i>		
17	ID card	none	Itv., s 33, p 2, item 51.
	(4) <i>Cross-border certificate</i>		
18	cross-border certificate	1500	item 7.

5.2.2. Fees for special procedures related to travel documents

19	the replacement of any travel document because the storage unit containing the biometric identifier fails to include or inadequately includes the data prescribed by the Act.	none	item 7., sub-item d)
20	travel document issued because the previous one was lost, destroyed, damaged and unsuitable for travel (apart from the case described in item 7, sub-item d) above)	the fee from items 1., 2. or 6. twice	item 8.
21	travel document issued in forthwith, urgency or immediate proceeding if the (second) personal passport was lost, destroyed, as well as damaged and unsuitable for travel (except for the case described in item 7, sub-item d) above) ¹²⁰	the fee from items 1. or 2. twice + the fee of issuing the given type of passport	item 9.

5.3. TIMEFRAME

- ✓ What is the standard timeframe for delivery (i.e. between formal application and actual obtaining of the document in question)? Please also indicate if special limitations apply in case of urgency, and what additional costs (if any) are incurred in such cases.

¹²⁰ The temporary personal passport can also be issued in a forthwith proceeding. Cf. GD No. 101 of 1998, s 21, p 1.

	Type of document	Delivery	Legal basis
	(1) <i>Passports</i> , (2) <i>Other travel documents</i> , ¹²¹ (4) <i>Cross-border certificate</i> ¹²²		
1	travel document (general)	20 days from the date of receipt of the request (apart from exceptions defined in an Act of Parliament or a Government Decree)	Utv., s 7/A.
2	temporary personal passport for a Hungarian national living or residing abroad	without further delay	GD No. 101 of 1998, s 21, p 1
3	travel documents in forthwith proceedings (any)	7 days	<i>ibid</i> , s 21, p 2
4	personal passport and second personal passport in urgency proceedings	3 days	<i>ibid</i> , s 21/A.
5	personal passport and second personal passport in immediate proceedings	24 hours	<i>ibid</i> , s 21/B.
	(3) <i>ID card</i>		
6	ID card	20 days	GD No. 414 of 2015, s 10

For the costs and surcharges, please consult the figures at 5.2.1. and 5.2.2.

Question 6 – Deviations in case of renewal or loss

- ✓ Does a different procedure apply in case of an application for renewal of an earlier document, rather than a first-time acquisition? If so, please highlight the specific deviations, and also indicate whether a reduced tariff is applicable in such cases.
- ✓ Does a different procedure apply in case of an application due to loss of a previous document, rather than a first-time acquisition? If so, please highlight the specific deviations, and indicate whether a surcharge imposed for such cases.

Substitution of the travel document¹²³ is necessary in two cases:¹²⁴ (1) if the citizen's personal data included therein have changed, or (2) if the travel document is no longer capable of identifying its owner (e.g. inadequate representation of the biometric data),

¹²¹ Utv., s 3, pp 2–3 broadens the scope of the Act to stateless persons, TCNs with immigrant or resident status, as well as refugees and beneficiaries of temporary protection, respectively.

¹²² GD No. 101 of 1998, s 2, p 2 extends the regulation on passports to cross-border certificates.

¹²³ *supra*, note 128

¹²⁴ GD No. 101 of 1998, s 27

has been completely filled in, or has been damaged. As for the ID card, its replacement may be initiated for the following reasons: the data stored therein or featured thereon have changed (except for their social security number and tax identification number), it is defective since production, does not or inadequately contains those data of the person or the card which can be found personal data and home address registry, it expires in 60 days, or its storage medium does not operate.¹²⁵ There is no deviation either in the application procedure or the costs, apart from the ones shown in rows no. 15 and 19–21 of the figures in 5.2.1. and 5.2.2., respectively. Renewal of the *same* travel document is generally not possible.¹²⁶ The only exception is the travel document for TCNs with immigrant or permanent resident status and the travel document for stateless persons since not only may both be substituted but replaced as well, and the validity of the latter can even be lengthened. For the differing costs of substitution, replacement and extension thereof, please consult row no. 15 of 5.2.1.

For deviations in case of loss, please consult rows no. 15 and 20–21 from the figures 5.2.1. and 5.2.2., respectively.

Besides the information above, there is no differentiation between first-time acquisition and the substitution of travel documents (even because of loss).

Question 7 – Grounds for withdrawal

- ✓ On which grounds are public authorities in your Member States entitled to withdraw a person's passport?

The only ground for withdrawal of the passport is invalidity.¹²⁷ The different causes of invalidity are described in GD No. 101 of 1998, s 20, p 1, items a–k, respectively:

- a) it has been lost, or has been misappropriated,
- b) it is no longer suitable for identifying its owner, has been completely filled in, or has been damaged,
- c) has been forfeited,
- d) has been destroyed,
- e) the owner is no longer entitled to the passport,
- f) it is used by somebody other than the rightful owner,
- g) it has expired,
- h) its owner is under a resolution of prohibition of leaving the country (in this case, the passport is withdrawn for the duration of the prohibition).
- i) it has been withdrawn for purposes described in s 19, p 3. This paragraph states that the travel document of the minor must be withdrawn on two occasions: (1) any of

¹²⁵ GD No. 414 of 2015, s 32, items a–e)

¹²⁶ The Explanatory Memorandum of the Utv. declared as early as in 1998 that according to the standards of the ICAO and the International Organization for Standardization (ISO) and European tendencies, the validity of the passport should be extended. Consequently, decision-makers deliberately ruled that the validity of the passport shall not be extended beyond its original timeframe. It is stated *expressis verbis* in Utv., s 7, p 9.

¹²⁷ Utv., s 19, p 1 determines that the passport office, apart from the cases described in Section 20, para 1, points a), d), h) and i), withdraws the invalid passport.

the parents who enjoys parental supervision rights requests it because s/he has withdrawn his/her consent to the issue of the travel document, (2) if the parent who enjoys the parental supervision rights requests it because the other one, whose such rights have been (temporarily) suspended, has not returned the travel document of the child during the (temporary) suspense of their parental rights.

j) the rightful user has died.

k) the office spearheading the arrest warrant registry has notified KEKKH (the central organ) of the registration of the travel document data electronically.¹²⁸

- ✓ Are these grounds for withdrawal considered compatible with the substantive and procedural requirements imposed by Articles 27 and following (public policy, public security, public health, access to judicial remedies etc.) of Directive 2004/38/EC?

No complaint has been raised at the Court of Justice of the European Union in this field. In addition, the decision ordering the withdrawal of the passport may be appealed before a court, which is considered an effective remedy in Hungarian jurisprudence.¹²⁹

(Note that this question does not pertain to withdrawal of nationality, which is a different matter, and that ID cards normally cannot be withdrawn.)

Question 8 – Acquisition by non-nationals at public offices

- ✓ Which types of travel documents, if any, can be obtained at public offices in your Member State by nationals of other Member States?

The emergency travel document is such a document. Other travel document cannot be obtained at public offices by nationals of other Member States,¹³⁰ unless they enjoy Hungarian nationality as well.

- ✓ If nationals of other Member States can indeed obtain such documents at public offices in your Member State, are there any differences with regard to the

¹²⁸ S 20, p 2 adds that the validity of the travel document is unaffected by the lack or inadequacy of biometric data contained therein.

¹²⁹ Utv., s 23, p 3

¹³⁰ Passports, pursuant to Section 5, para 1 of the Utv. are available mostly to Hungarian citizens, unless decreed otherwise by an Act of Parliament or an international treaty. Travel documents listed in GD No. 101 of 1998 are for specific groups of people, most of which include nationals of other Member States. In addition, although it is not impossible (formally) that an EU national might become a refugee (or beneficiary of temporary protection, or a person enjoying subsidiary protection, along the same line), it is also highly improbable to happen. Moreover, even though ID cards can be issued for Hungarian nationals, TCNs with immigrant or permanent resident status, refugees as well as people enjoying subsidiary protection, (cf. GD No. 414 of 2015, s 7, p 2), it can be used only by Hungarian nationals to travel abroad (cf. Utv., s 1, pp 3–3a). Finally, cross-border certificates can be applied for exclusively by Hungarian nationals (cf. GD No. 101 of 1998, s 8, p 1).

appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)¹³¹

- ✓ With regard to the applicable procedure, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. longer/shorter timeframes)
- ✓ With regard to the associated costs, are there any differences that apply to this group, compared with nationals of your own Member State? (e.g. surcharges)
- ✓ Is it mandatory for long-term residing EU citizens to have registered their presence with the relevant authorities beforehand (in line with Article 8(1) of Directive 2004/38/EC, if implemented in your Member State) before they are able to apply for said documents?

- ✓ Is information on the acquisition of the relevant travel documents adequately made available in (at least the main) other EU languages?

The KEKKH website has a sub-page dedicated to Personal Documents Issuance, where information is made available in English on passports and ID cards.¹³² The website of the BMBÁH is fully available in Hungarian, English and German, and provides information on related proceedings as well.¹³³

Question 9 – Policy for extension and renewal in consular representations in other Member States

- ✓ Does your Member State adhere to a uniform general policy with regard to the extension or renewal of travel documents at its consular representations abroad, or do the conditions and procedures applied differ per country?

The legal status of the foreign missions of Hungary is identical, neither is there any difference concerning applicable laws or proceedings.

Nevertheless, there are differences based on which country the office is seated in, since certain consular activities cost less in neighboring countries than in other European ones, which require, in turn, a smaller fee to pay than states outside Europe. Among travel documents attainable from the consular officer, the personal and second personal passport follow this country-based differentiation, whereas the temporary personal passport, the ETD and the travel documents for a single journey are consistently 30 EUR in each type of country.¹³⁴

¹³¹ Since Hungarian and other Member State authorities always play a complementary role in the process, it seems meaningless to compare and contrast them.

¹³² <http://kekkh.gov.hu/en/>

¹³³ <http://bmbah.hu/index.php?lang=hu>

¹³⁴ Strangely enough, Decree No. 5 of 2010 of the Minister of Foreign Affairs (XII. 31.) on Consular Administrative Costs does not regulate this differentiation, and the spreadsheets provided in the Annex of the Decree are not the same as the ones on the website of the Consular Service (<http://konzuliszolgalat.kormany.hu/konzuli-dijak>).

- ✓ Compared to nationals resident in your own country, do any additional conditions and requirements apply at your Member State's consular representations in other countries, when nationals resident in those other countries seek to obtain or renew travel documents?

Proceeding before a consular officer for a national resident in another Member State is, for the most part, identical to the general rules of the passport (travel document) request procedure. Specific deviations include:

- if appearance before the consular officer incurs a disproportionate burden on the applicant, they may submit their application via post (for passports which do not include fingerprints, or temporary personal passports not issued *ex officio*).¹³⁵
 - if a person was born abroad, is under six years of age, is not listed in the personal data and home address registry of Hungarian nationals, and does not possess an official document capable of verifying their nationality, the Hungarian citizenship of the applicant shall be presumed if the birth certificate produced abroad, as well as a statement of the Hungarian national legal representative concerning the personal data and nationality of the child have been attached to the application.¹³⁶
- ✓ Are reduced rates applicable for specific categories of persons (e.g. costs waived for recipients of social benefits)?

Pursuant to general public administration law, authorities may grant exemption from costs to any natural person who, due to his income and financial situation, is unable to pay for all or part of the procedural costs, with a view to easing the burden on such a person in protecting his rights.¹³⁷ This exemption means total or partial exemption from advancing and bearing duties, fees and other procedural costs.¹³⁸

For the purposes of consular affairs, Decree No. 5 of 2010 (XII. 31.) of the Minister of Foreign Affairs on Consular Administrative Costs enumerates the following groups of persons who enjoy *ratione personae* exemption from the consular fee:¹³⁹

- the employee of a Hungarian budgetary organ on an official foreign mission, along with their close relative living in the same household at the place of the mission in case of missions lasting more than three months, if the consular activity occurs because of or related to their stay abroad.
- a Hungarian citizen who holds an office abroad at an institution of the European Union of an intergovernmental organization of which Hungary is also a member, along with their close relatives living in the same household at the place of the mission, if the consular activity occurs because of or related to their stay abroad.

¹³⁵ GD No. 101 of 1998, s 15, p 4

¹³⁶ *ibid*, s 16, p 3 - The consular officer is also unique in the regard that it is the only office authorized to issue a temporary personal passport. Cf. *ibid*, s 21, p 1.

¹³⁷ Ket., s 159, p 1

¹³⁸ *ibid*, s 159, p 2

¹³⁹ Decree No. 5 of 2010 (XII. 31.) of the Minister of Foreign Affairs on Consular Administrative Costs, s 13, p 2, items a-c)

- the honorary consular officer of Hungary, and their close relatives living in the same household.

In addition, with the objective of furthering consular protection, in cases necessitating special consideration, the official consul may decide to waive or mitigate the fee, and either they or, in the case of ministerial endorsement (legalization), the minister in charge of foreign affairs may, upon request and after consideration of the applicant's material conditions, may waive or mitigate the cost. Such a decision is generally binding on the fees paid at the honorary consulate as well.¹⁴⁰¹⁴¹

- ✓ Which information and certificates are nationals of your own country expected to adduce at consular representations in other EU Member States when they there wish to apply for travel documents for a newborn child?

In such a case, the birth certificate produced abroad, as well as the statement of the legal representative (who shall be a Hungarian citizen) concerning the personal data and the nationality of the child must be attached to the application.¹⁴²

- ✓ Are authenticated translations required, or are the original copies, accompanied by informal transcripts, considered as equivalent and acceptable for the issuing of such travel documents?

Normally, authentic instruments made out abroad must be considered affirmative proof according to Hungarian law only if endorsed by the Hungarian foreign mission in the country of issue. Any instrument made out in a language other than Hungarian shall be accepted solely with the official translation attached. In addition, the client may offer a statement concerning a fact to be verified instead of a document which may be unreasonably difficult to acquire. (In such a cases, the client needs to be advised concerning the legal consequences of producing a false statement.)¹⁴³

Question 10 – Acquisition for newborn children of non-nationals at domestic public offices

- ✓ Is it possible for non-nationals to obtain travel documents for a newborn child at the domestic public offices in your Member State? *If not, skip to Question 11.*

¹⁴⁰ *ibid*, s 15, s 16, p 1, s 17 (read together)

¹⁴¹ Consult *ibid*, s 14, p 1 to find the *exemptio materiae* of this rule. One of these is the issuance of the temporary personal passport after being asked by the authority of the other State, or if consular aid defined in s 5, p 2, items b), c) or p 3 has been given (cf. item d)). Another one is the replacement of an official document if it was based on an erroneous entry of the authority, or a document defective since production, including when the passport needs to be replaced because its storage medium containing biometric identifiers does not include or inadequately includes the data prescribed by the Utv.

¹⁴² *ibid*, s 16, p 3

¹⁴³ Ket., s 52, pp 2–3

No, it is not possible. Instead of applying at domestic authorities, “[...] lawfully residing parents of the new-born child usually ask for the recognition of the child *as the citizen of the country of their origin* at their embassy in Hungary right after the birth of the child, and after such recognition they also ask for the issuance of a passport for the new-born or the placement of the details of the child into the passport of either of the parents, and as a result the passport becomes valid for the new-born child, as well.”¹⁴⁴

The issuance of the passport or ID by the country of nationality will normally require the production of the birth certificate of the foreign child born in Hungary, issued by the Hungarian authorities. The issuance of this birth certificate, necessary to proceed with the application for an ID or passport to the authorities of the state of nationality, may take some time (a few weeks), in particular where the child is not a Hungarian citizen. This delay may hinder the child’s and her parents’ ability to travel for a few months after the birth of the child. The data of the child are sometimes entered into the travel document of the parent instead of a new one.¹⁴⁵

- ✓ If so, are there any differences with regard to the appropriate venue that apply to this group, compared with nationals of your own Member State? (e.g. fewer locations where the documents may be procured)
- ✓ If the possibility is there, which information and certificates are non-nationals expected to adduce at national public offices when applying for travel documents for a newborn child?
- ✓ If the possibility is there, is the timeframe for the issuing of such travel documents noticeably longer or shorter, as compared to when own nationals apply for travel documents for their children?

Question 11 – Travelling with minors

¹⁴⁴ Although such a child may receive residence visa, these are not “travel documents” *per se*. Cf. http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/border/498_emn_ahq_on_travel_documents_for_new_born_baby_wider_dissemination.pdf, pp. 3–4

¹⁴⁵ Conversation with an officer of BMBÁH.

- ✓ In addition to their own valid travel document, does your country require minors travelling alone to produce any extra (official) documents signed by their parents or legal guardian(s) authorising them to travel?
- ✓ In addition to their own valid travel document, does your country require minors travelling with adults who are not their legal guardian to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?
- ✓ In addition to their own valid travel document, does your country require minors travelling with only one parent to produce any extra (official) documents signed by their parents, or legal guardian(s) authorising them to travel?

In the case of Hungarian children wishing to travel abroad, there is no legal restriction on their journey abroad.¹⁴⁶ At the same time, it is still “advised” to produce a declaration of consent from both parents.¹⁴⁷ Entry and transit of minors from other Member States is also not subject to these limitations; EEA nationals may enter Hungary freely with a valid travel document or ID Card, or, in cases defined by an international treaty, even an expired travel document, ID card or other document recognized for the purposes of entry suffices.¹⁴⁸

PART III – INCLUSION OF BIOMETRIC DATA AND ITS EFFECTS

Introduction

Council Regulation 2252/2004/EC requires Member States to collect and store biometric data, including fingerprints, in the storage medium of passports and other travel documents, and require that such data be used for verifying the authenticity of the

¹⁴⁶ Cf. Utv., s 1, p 3 which establishes that „The right to travel abroad shall be exercised with a valid travel document.” S 2 adds that the Utv. regulates the restrictions on travelling abroad. Since there is no such restriction, it can be inferred that children may travel abroad without a declaration of consent.

¹⁴⁷ Such a piece of advice is seen on the website of the Hungarian Police: <http://www.police.hu/english/border-information/minors-wishing-to-travel-abroad>. A declaration of consent must nonetheless be made out by the parents (or the legal guardian) before the notary public, the district office in charge of child protection and guardianship, the head of the correctional facility, the consular officer, the passport office or the district office, or should be produced by the parents. It is also required to be a private document with full probative force. Alternately, the document might have to prove the termination or temporary suspension of parental supervision rights. (Utv. s 17, p 3). This declaration does not have to be enclosed if the applicant’s passport or ID which was used for travelling abroad is no longer capable of identifying its owner, has been damaged, lost or misappropriated, and the owner wishes to have a temporary personal passport issued (*ibid*, s 17, p 4). The law does not distinguish between the three groups of minors listed per question.

¹⁴⁸ Szmtv., s 3, p 1 . An officer from the Border Policing Division of the Hungarian Police commented that Hungary lacks legal measures in this field. Their policy, as described in an internal working paper, is that they might ask for a declaration of consent co-written (co-signed) by both parents (or if the child travels with one of their parents, then from the other one), authorizing the travelling parent or the accompanying adult to escort the child. Although no specifications exist for its form and content, it is advised to include the data of the child and the accompanying adult, as well as the scope of parental supervision rights conferred on the latter. The officer further added that the police is not legally empowered to act, and its actions are based solely and largely only on the Schengen Visa Code, VII. 6.

document or the identity of the holder. Further measures may be introduced with regard to the processing and use of such data, or requiring the inclusion of additional biometric data going beyond the scope of the Regulation. The adoption of the domestic rules concerned may have given rise to controversies, and they could potentially have had a 'chilling effect' on the acquisition of travel documents. This warrants further inquiry, also e.g. with regard to possibly instigated judicial or non-judicial procedures attempting to curb the discretionary powers exercised by the Member State legislature, and/or targeting the underlying EU instrument.

Question 12 – Inclusion of fingerprints (pursuant to EU law) and its possible effects

- ✓ Did your country already introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents *before* the adoption of Regulation 2252/2004/EC? *If so, skip to Question 13!*

No, we did not.¹⁴⁹

- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?

The bill later known as Act No. LXXV of 1999 on the Rules of Countering Organized Crime and Related Phenomena, as well as Related Amendments of Acts of Parliament, s 37, p 3, item a) authorized the aliens policing office to collect the fingerprints of non-nationals.¹⁵⁰ The official ministerial reasoning explained that border police officers will then be enabled to find those who are prohibited from entering the country.¹⁵¹ Parliamentary debates did not pursue this issue any further. At the same time, one of the parliamentary questions asked of Draskovics Tibor, who was the minister in charge of justice and law enforcement touched upon the idea of biometric data in passports, although it was not directed against the inclusion thereof *per se*.¹⁵²

¹⁴⁹ Not only was the use of fingerprints for travel documents unknown in Hungary prior to the Regulation, fingerprints themselves were also scarcely used for identification. Before the adoption of the Regulation, there were only six laws on fingerprint use in personal documents, and all of these laws are international treaties transposed into Hungarian law (Decree Law No. 14 of 1957, Decree Law No. 20 of 1989, Act No. CII of 2005, as well as International Treaties of the Foreign Minister 2000/17, 2000/18, 2000/19). These laws name six different special types of ID cards, but the *ratio materiae* and *ratio personae* of all laws is very specific; and these laws were never to be applicable to personal ID or travel documents in general.

¹⁵⁰ Cf. <http://www.parlament.hu/irom36/0272/0272.htm>.

¹⁵¹ *ibid*, s 37

¹⁵² Cf. <http://www.parlament.hu/irom38/11247/11247.pdf>, whereas the answer can be read at <http://www.parlament.hu/irom38/11247/11247-0001.pdf>. The question of Ódor Ferenc, MP, featured an elderly lady who was unable to have her fingerprints taken, and was told that it is impossible to take one from old skin, and she simply received an official certificate that no fingerprints were taken because of temporary physical inability. The lady contested the argument, since she would then have to pay once every year to renew the passport, as well as bear any other related costs. The Minister replied that (1) the

Sincere criticism came from the data protection commissioner, in as early as 2004. In his 2004 Parliamentary Report, he expressed that with the adoption of the Regulation 2252/2004/EC, “the EU will be similar to a digital cage”, noting that there was then no information on whether or not there would be any central database with access to the data, and which should prevent abuse of the data, as well as asking why biometric passports are necessary after the downfall of internal borders. He also gave examples that (these) identification methods are not infallible, either. The Report also repeated various exceptions raised by “Workgroup 29”¹⁵³, led by Peter Schaar. Previously, the Workgroup produced a position paper on biometric identifiers, which opined that the data protection principles defined in Directive 95/46/EC should be wholly taken into consideration, regarding the special nature of biometrics as well as the possibility of collecting biometric data without the knowledge of the affected people.¹⁵⁴ In the next year, they also expressed worries because of the possible inclusion of another (second) biometric identifier, and used empirical evidence to demonstrate that these procedures do not ensure the necessary safety or ease for mobile persons because their admission or denial of the owner of the passport sometimes happens without any ground. In addition to being ineffective, the fingerprints were also criticized for enabling the “one and multiple” identification of persons, whereas the decision-making process was deemed not transparent and legitimate enough. Eventually, it noted that ICAO only demands one biometric identifier and leaves the second one optional, contrary to the proposed Regulation.¹⁵⁵

By 2005, the question of biometric passports “moved up” to the Introduction of the yearly report of the Commissioner.¹⁵⁶ The Commissioner noted that these passports were being introduced all over the EU, even though he criticized the lack of technical specifications. He also expressed that biometric identifiers can only be parts of travel documents as long as they align with EU prescriptions, and it is unlawful either to step over them, or use them for other purposes. In addition, the Commissioner declared the automatization as the greatest danger; the blooming of biometric identification might result in total control of our lives.¹⁵⁷ He noted that even though London was one of the cities with the most camera surveillance, it still suffered two devastating terrorist attacks over the previous few years. The Commissioner voiced his concerns in his position paper 1485/J/2005, criticizing the Hungarian timeline for the adoption of the

Regulation itself prescribes as a subsidiary rule that in similar cases, Member States may issue a temporary passport with a validity not exceeding 12 months, (2) referred to the subsidiary technical rules of the EU on how to take fingerprints, and (3) added that the usability of fingerprints is verified by computers, not “human factors”. (4) He also explained that the statistical data of KEKKH imply that between 29 June 2009 and 31 October 2009, only 0,44 % of passport applications included persons unable to provide fingerprint data, which is in line with the previously EU-calculated ratio of 0,5 %. He pointed out that in these cases, in order to counter discrimination (the passport would be valid for only one year), the fee would only be 2500, the lowest scale of any passport fee.

¹⁵³ An independent consultative organ consisting of the data protection commissioners of the Member States, assisting the European Commission.

¹⁵⁴ <http://www.parlament.hu/irom37/8929/08929.pdf>, p. 175.

¹⁵⁵ Cf. <http://www.parlament.hu/irom37/14721/14721.pdf>, pp. 180-181.

¹⁵⁶ Cf. <http://www.parlament.hu/irom37/19341/19341.pdf>, p. 16.

¹⁵⁷ *ibid.*, pp. 130-131.

Regulation, the possible privatization of the state registry of biometric data, as well as the approach which regards biometric identifiers as “ace weapons” in the war on terror. He further noted, using thoughts of the Workgroup, that featuring biometric elements in travel documents and ID cards “results in great risks, raises numerous ethical, legal and technical questions”, and that a societal debate should be presented, that a distinction ought to be made between biometric data collected and stored for a public purpose, and those for a contractual purpose (on someone’s own authorization), and that the use of biometric data must be clearly restricted.¹⁵⁸ The 2007 Report included a short description of how biometric data are collected and stored in Hungary, although the Commissioner raised no objections.¹⁵⁹ In 2008, the Commissioner was asked to give his opinion on the planned amendment of the Utv. He found that it would not lead to human rights abuses for minors, although asserted that no data may be entered into the database via which family relations might be discovered. This suggestion has been accepted.¹⁶⁰

Besides the criticism and concerns voiced by the Commissioner, the Hungarian Civil Liberties Union (HCLU), one of the most significant human rights NGOs in Hungary has written a protesting open letter to the government. They argued that the new regulation would be “unnecessary” and “precipitous”, as well as dangerous to the private sphere of citizens. They also supposed that in such a form, the Draft is of no use to the “war on terror”, and that it seriously restricts fundamental rights, generalizing identification via fingerprints. HCLU further criticized the legitimacy of the decision, pointing out that there was no public debate on this issue, and claimed that data protection and technical guarantees are lacking. The open letter was signed by four other NGOs, such as the Eötvös Károly Public Policy Institute, the Hungarian Helsinki Committee, which are also major NGOs. HCLU suggested that Hungarian people should also sign the open letter of the NGOs Privacy International, Statewatch and European Digital Rights.¹⁶¹ These concerns have had no measurable impact on the decision-making process of the Parliament. Upon introducing the Regulation, HCLU accused the government of voting it despite it being incompatible with the (then) Constitution, and further argued that its consequences were not disclosed for the public, did not allow of a debate and alleged that even the data protection officer was prevented from voicing his opinion.¹⁶² HCLU also commented on the background of the introduction of the biometric-data-filled passports.¹⁶³

- ✓ Were there any *judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?¹⁶⁴

¹⁵⁸ *ibid*, pp. 179-180.

¹⁵⁹ Cf. <http://www.parlament.hu/irom38/05014/05014.pdf>, pp. 235-236.

¹⁶⁰ Cf. <http://www.parlament.hu/irom38/08959/08959.pdf>, p. 166.

¹⁶¹ Cf. https://www.privacyinternational.org/issues/terrorism/ep_letter_biometrics.html. The open letter is unfortunately not available.

¹⁶² Cf. <http://tasz.hu/adatvedelem/biometrikus-utlevel-et-vezetnek-be-magyarorszagon>

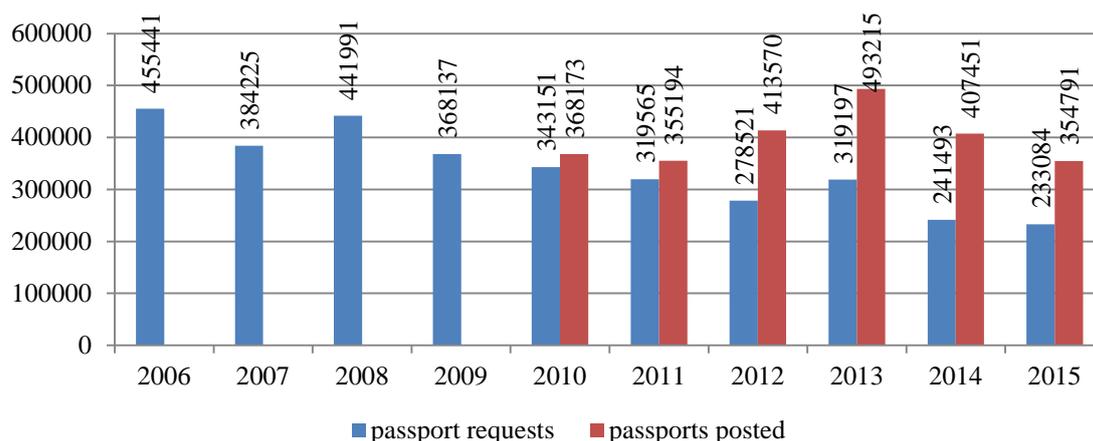
¹⁶³ Cf. <http://tasz.hu/adatvedelem/het-elejetol-itt-biometrikus-utlevel>

¹⁶⁴ Databases included the website of the European Court of Human Rights (<http://hudoc.echr.coe.int/>), that of the Constitutional Court (<http://mkab.hu/hatarozat-kereso>) and the database of the judgments

No, there were no such complaints.

- ✓ Do citizens generally experience the inclusion of biometric data in passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the adoption of the Regulation (e.g. on the number of passports issued).

According to data found on the website of, and provided by, KEKKH,¹⁶⁵ the number of passports requested in a given month, minus proceedings which have not yet terminated, are as follows between 2005 and 2015. It is clearly visible that beginning from 2009, the number of applications has been receding. At the same time, no strong evidence supports that this change is due (only) to the Regulation.



Question 13 – Inclusion of fingerprints (unilaterally) and its possible effects
(only to be answered in continuation of Question 12, first sub-question!)

- ✓ When did your country introduce measures requiring the collection and retention of the fingerprint data for use in connection with travel documents?
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests? What were the outcomes?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of biometric features in passports and travel documents, e.g. in the form of

ordinary courts (<http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara>). This applies to all other questions as far as judicial procedures are concerned.

¹⁶⁵ The figures are available on the website of KEKKH: <http://nyilvantarto.hu/hu/statisztikak>, as well as http://nyilvantarto.hu/archiv_honlap/.

constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were their effects?

- ✓ Did citizens generally experience the inclusion of biometric features in the passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the mandatory introduction of biometric features in your country (e.g. on the number of passports issued).

Hungary did not introduce legislation in this field before the Regulation.

Question 14 – Processing of biometric data and possible objections thereto

- ✓ Did the measures introduced in your country requiring the collection and retention of the fingerprint data for use in connection with travel documents indicate where the data is to be kept, or is this otherwise known (e.g. a central registry)?
- ✓ In case such data is kept in a central registry, does domestic law allow for it to be used / processed also for other purposes, such as national security, prevention of crime and identification of disaster victims?
- ✓ In case such data is kept in a central registry, and domestic law allows for it to be used / processed also for other purposes, was this leniency introduced openly and without (public) resistance?
- ✓ In case there was (public) resistance and if there were objections lodged, either during the parliamentary process or in subsequent court procedures, what were the outcomes and effects of these actions?

Currently, KEKKH is the central data processing organ.¹⁶⁶

For the use of fingerprint data for other goals, please consult the answer to Question 3 which enumerates the occasions KEKKH is authorized to process data, as well as the authorities and persons who may request such data from the Office.

Since KEKKH has been playing this role since 2007, and adopting Regulation 2252/2004/EC has not brought about a change in the competence of KEKKH in this regard, there was scarcely any reaction to the fact that biometric data will be processed by KEKKH. Only one objection came from the then data protection commissioner, Attila Péterfalvi. He criticized the draft of the GD No. 276 of 2006, which was going to classify the travel document registry as part of the personal data and home address registry, alongside criminal record registry, the Hungarian Card registry as well as other cards. The Commissioner claimed that such a disposition is “unacceptable” to mingle personal data processing on different legal bases, either in the law itself, or through the

¹⁶⁶ Based on Utv., s 24, p 1, item b), the KEKKH has been playing this role since GD No. 276 of 2006 has been in effect (1 January 2007). From 11 November 2015, the GD, as modified by Government Decree No. 335 of 2015 (XI. 10.), s 3, no longer refers to s 24; instead, it refers to s 21 of the Utv. which simply introduces the concept of „central data processing organ”.

operations of KEKKH.¹⁶⁷ The law, as it entered in effect, differentiates between these categories, having addressed the concerns of the Commissioner.

Question 15 – Collection of other types of biometric data and possible objections thereto

- ✓ Beyond fingerprints, are in your country any other types of biometric data required to be included in passports and other travel documents? If so, which types?
- ✓ Were there any *non-judicial* objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. during parliamentary debates, or campaigns by NGOs? If so, what arguments were invoked to buttress those objections and protests, and what were their effects?
- ✓ Were there any *judicial* objections or protests launched against the inclusion of these additional biometric features in passports and travel documents, e.g. in the form of constitutional complaints or other forms of litigation against public authorities? If so, what served the legal basis for such claims, and what were the outcomes of these procedures?
- ✓ Do citizens generally experience the inclusion of this additional biometric data in the passports and travel documents as a hindrance, i.e. did they in any way have a ‘chilling effect’ on the (rate of) applications for obtaining or renewing travel documents in your country? If possible, base your answer on comparative data from before and after the introduction of these requirements.

Yes, the facial image of the owner is to be inserted on (in) the passport and certain other travel documents,¹⁶⁸ as well as the ID card.¹⁶⁹ Nevertheless, these rules have been introduced in Hungary several years *before* fingerprints were, collected pursuant to the Regulation, and objection thereto is scarce as well as hardly measurable.

PART IV – ACTUAL OR POTENTIAL OBSTACLES FOR EU CITIZENS

Introduction

Here as anywhere else, differences between legal systems of the various Member States can actually or potentially create particular obstacles for static and mobile EU citizens alike. To an extent, these can be of a predominantly practical or technical nature. At the

¹⁶⁷ Source: http://abi.atlatszo.hu/index201.php?menu=allasfogl2006&dok=2004_J_2006-2.

¹⁶⁸ Utv., s 7, p 1, item a). This rule also applies to documents from GD No. 101 of 1998: travel document for beneficiary of temporary protection (s 11, p 4, item a)), travel document for refugee and travel document for person enjoying subsidiary protection (s 11/A, p 3, item a)), travel document issued for a single journey (for refugees, persons enjoying subsidiary protection, or beneficiaries of temporary protection) (s 11/B., p 2, item a)), as well as travel document to a TCN with immigrant or permanent resident status, and travel document for stateless person (s 12, item a)). Moreover, under s 2, p 2 of the Government Decree, its scope includes the cross-border card as well.

¹⁶⁹ Act No. LXVI of 1992 on the Registry of the Personal Data and Home Address of Citizens, s 29, p 2, item b)

same time, these may flow from policy practices with regard to selective recognition of travel documents, sanctions imposed in case of non-compliance, denial of consular protection, or the treatment of travelling (accompanied or unaccompanied) minors. In addition to varying from country to country, the relevant conditions and procedures may change without prior notice. The following set of questions see to further expose the hindrances EU citizens may be confronted with.

Question 16 – Hindrances for own nationals as regards the venues and costs for obtaining travel documents

- ✓ In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by own nationals with regard to the *accessibility of the venues* where travel documents can be obtained or renewed?

No such hindrance is tangible for Hungarian nationals to be measurable, or contested before judicial organs. Nevertheless, *sentiments* and distrust against bureaucracy persist. Aware of these, the Public Administration and Public Services Development Strategy 2014-2020 considers the lessening and digitalization of bureaucracy a highly significant goal. Since passports can be applied for at any district office, the Strategy prides itself on the establishment of district offices, allowing the citizens to lodge an application in 197 places, which augments to 2380 out of a total of 3154 municipalities if one also counts special offices and authorized personnel helping them.¹⁷⁰

- ✓ Equally, in reference to the answers provided to Questions 5-10 above, are any particular hindrances experienced in your country by own nationals with regard to the *costs* associated with the application for and acquisition of travel documents?

There is no such hindrance known or measurable.

Question 17 – Hindrances for EU citizens as regards the venues and costs for obtaining travel documents

- ✓ What are the three largest groups of non-national EU citizens that annually visit your country (i.e. short-term residents in the sense of Directive 2004/38/EC, stay < 3 months)?

Consistently, the three largest groups are citizens of Austria, Romania and Slovakia.¹⁷¹ Below you can see the number of visitors¹⁷² for the years between 2009 and 2014 (measured in thousand persons):

¹⁷⁰

http://www.kormany.hu/download/8/42/40000/K%C3%B6zigazgat%C3%A1s_feljeszt%C3%A9si_strat%C3%A9gia_.pdf, p. 41

¹⁷¹ The source is the Hungarian Central Statistical Office (KSH) which is provided data by the Ministry for National Economy. Source: https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_ogt003e.html.

Country/Year	2009	2010	2011	2012	2013	2014
Austria	6437	6696	6649	7233	7117	7297
Romania	7783	7614	7575	7901	7282	8248
Slovakia	9095	8404	8825	9971	10.015	10.324

- ✓ What are the three largest groups of non-national EU citizens present in your country for a more extended duration (i.e. long-term residents in the sense of Directive 2004/38/EC, stay > 3 months)?

The three largest groups of non-national EU citizens¹⁷³ are from Romania (28.641), Germany (18.773) and Slovakia (8744 people).¹⁷⁴

- ✓ In reference to the answers provided to Questions 5-10 above, are any hindrances experienced in your Member State by these particular groups of mobile EU citizens with regard to the *accessibility of the venues* where travel documents can be obtained or renewed? (e.g. necessity to travel abroad, due to the unavailability of consular delegations)

Austria has five consular offices in addition to her embassy in Budapest, and Germany maintains a consulate in Pécs. Romania operates two Consulates General (Gyula, Szeged) in Hungary in addition to the one at the embassy in Budapest, whereas Slovakia operates one in Békéscsaba in addition to the one embassy in Budapest. Venues are therefore accessible, thus applicants are exempt from travelling elsewhere.

No such hindrance was found. In Austria, Hungary operates one official consular representation, and there is also an honorary consul per *Land*, whereas in Germany, there are three Consulates General, one Consulate as well as eight honorary consuls covering the entire country. In Romania, there are two Consulates General, a consular

¹⁷² According to the methodology available at <https://www.ksh.hu/docs/hun/modsz/modsz45.html>, “visitor” describes “a person who spends less than 12 months at a visited place other than their habitual residence, and their main goal for travelling is anything other than being paid at the visited place”. The data above officially refer to “foreign nationals arriving to Hungary via border crossing points”.

¹⁷³ The methodology described at <http://www.ksh.hu/docs/hun/modsz/modsz10.html> explains that the expression “*Magyarországon tartózkodó külföldi állampolgár*” (foreign national residing in Hungary) includes those foreign nationals possessing residence permit (“*tartózkodási engedély*”) or authority to reside (“*letelepedési engedély*”), who habitually (“*életvitelszerűen*”) lived on the January 1 of the given year in Hungary. Sources of the data include the following ones from the BMBÁH: residence and immigration permits for an extended duration, the system of residence permits and authorities to reside of TCNs, the registry thereof for foreign nationals with the right of free movement and residence, the reports of the Directorate of the Refugee Affairs, as well as the personal data and home address registry of the KEKKH and the the social security number registry of the National Health Insurance Fund of Hungary. For more information, please consult http://www.ksh.hu/apps/meta.objektum?p_lang=HU&p_menu_id=110&p_ot_id=100&p_obj_id=WNVN.

¹⁷⁴ Source: http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_wnvn001b.html.

office and four honorary consulates, while Slovakia also operates one Consulate General and a consular representation in two different cities.¹⁷⁵

In reference to the answer provided to Question 8 above, are any particular hindrances experienced in your country by these particular groups of mobile EU citizens with regard to the *timeframe* associated with the application for and acquisition of travel documents for *newborn children*? No such hindrance was identified. Conversations with representatives of the consular offices revealed that the usual timeframe for procuring travel documents is generally between 4-6 weeks, depending on the availability of services in the home country. It is also possible to ask for travel documents for newborn children, with the same timeframe.

(Note that some of the data necessary to provide an answer to this question may be procured from consular authorities of the relevant Member States, from national complaint bodies such as Ombudsmen, or by contacting mobile EU citizens and inquiring if they have personally encountered any such problems.)

Question 18 – Discrepancies in the recognition of travel documents for identification purposes

Background example (fictitious)

Björn is Swedish and holidaying in Slovakia. He took his ID card issued by a bank with him – which in Sweden is accepted as proof of identity.

Björn could get into trouble however if the Slovakian authorities want to check his identity, because the only valid ID documents they recognise are national ID cards and passports issued by the Slovakian authorities.

- ✓ Are there discrepancies in the travel documents recognised as valid ID in the home country of the three largest groups of non-national EU citizens that annually visit your country (identified under Question 17), as compared to the travel documents that are recognised in your Member State?¹⁷⁶
- ✓ Are there discrepancies in the travel documents recognised as valid ID in the home countries of the three largest groups of non-national EU citizens present in

¹⁷⁵ The list is available at: <http://www.kormany.hu/en/ministry-of-foreign-affairs-and-trade/missions>.

¹⁷⁶ For answering this question, reference may be had to the aforementioned PRADO database (<http://www.prado.consilium.europa.eu/>).

your country for an extended duration (identified under Question 17), as compared to the travel documents that are recognised in your Member States?¹⁷⁷

The identity of a Hungarian citizen can be verified with a valid ID card, as well as a valid passport or card-format driving licence.¹⁷⁸

Austria recognizes, for example, passports, identity card and the driving licence.¹⁷⁹ In Germany, a valid ID card as well as a passport can be used for the same purpose.¹⁸⁰ Romania recognizes personal identity cards, passports, the driving licence and personal identity documents issued for foreigners, whereas Slovakia accepts ID cards¹⁸¹ and travel documents (notably passports, diplomatic service and service passports and travel certificates).¹⁸² In conclusion, all countries recognize ID cards and passports, whereas Austria, Hungary and Romania also recognize the driving licence.

Question 19 – Consequences of expiry or loss

- ✓ Does your country allow for EU citizens to enter the territory without being in possession of a valid travel document? If so, under which conditions?

EEA nationals holding (1) a valid travel document, *or* (2) a valid ID card, *or* (3) a travel document, identity card or any other recognized document for the purpose of entry which has expired (in case an international treaty declares it) shall have the right of planned residence not exceeding three months (ninety days) from the date of entry for as long as their residence does not become an unreasonable burden on the social assistance system of Hungary.¹⁸³

- ✓ Does your country allow for EU citizens to exit the territory without being in possession of a valid travel document? If so, under which conditions?

Generally, EU citizens have to possess a valid ID or travel document to leave the country.¹⁸⁴ The only possibility to leave the territory of Hungary is an *ex lege* situation. If an EU citizen does not own a valid travel document, their right of residence terminates,¹⁸⁵ and the competent authority adopts a resolution to declare it. These persons must leave the territory of Hungary within three months from the operative date of the resolution.¹⁸⁶

¹⁷⁷ Also for answering this question, reference may be had to the aforementioned PRADO database (<http://www.prado.consilium.europa.eu/>).

¹⁷⁸ Act No. LXVI of 1992, s 29, p 12

¹⁷⁹ Cf. <https://www.help.gv.at/Portal.Node/hlpd/public/content/99/Seite.990001.html>

¹⁸⁰ Cf. <https://www.bmi.bund.de/cae/servlet/contentblob/607490/publicationFile/35245/eperso.pdf>, s 1, p 2.

¹⁸¹ Cf. <http://www.zakonypreludi.sk/zz/2006-224>, s 2, p 1.

¹⁸² Cf. https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1997/381/vyhlasene_znenie.html, s 5, p 2.

¹⁸³ Szmtv., s 5

¹⁸⁴ There is no specific regulation on this issue in national law.

¹⁸⁵ *ibid*, s 14, p 1

¹⁸⁶ *ibid*, s 15, p 2, p 4

- ✓ Which sanctions, if any, are applied to *own nationals* that are found to be not in possession of a valid travel document when attempting to enter or exit the country? Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

The Fundamental Law prescribes that “Hungarian citizens shall not be expelled from the territory of Hungary and may return from abroad at any time.”¹⁸⁷ This clause is repeated in the Utv. which emphasizes that “[t]he right to return from abroad, as established in Article XIV, paragraph 1 of the Fundamental Law, must not be denied, limited or subject to any condition.”¹⁸⁸ It can be deduced that failing to be in possession of a travel document does not prevent Hungarian nationals from returning to Hungary; and no penal or administrative sanction is applied them. At the same time, they must apply for a temporary personal passport or an emergency travel document to be able to identify themselves, and to lawfully enter the territory of Hungary,¹⁸⁹ bearing the costs associated seen in Question 5.2.

As for exiting the country, the Fundamental Law expresses that “Everyone staying lawfully in the territory of Hungary shall have the right to move freely and to freely choose his or her place of stay.”¹⁹⁰ This right, as clarified in Utv. includes the right to freely leave the territory of Hungary, which includes travel abroad with the objective of permanent residence abroad.¹⁹¹ In addition, even though the right to travel abroad must, by default, be exercised with a valid travel document (or ID card), Hungarian nationals have the right to travel to countries identified by international treaties even upon expiry of their travel document or ID card if an international treaty allows them to do so.¹⁹²

- ✓ Which sanctions, if any, are applied to *nationals of other Member States* that are found to be not in possession of a valid travel document when residing in, transiting or travelling across your country?
Please describe the nature and modalities of these sanctions as accurately as possible (administrative, penal, level, etc.), indicating the exact source in domestic law of the sanctioning regime.

EU nationals (and family members) whose travel document, ID card (or their document certifying the right of residence) is stolen, destroyed or lost, shall report it to the competent authority, as well as if any such document is presumed lost and reported as such but found subsequently. In addition, they will be required to obtain a

¹⁸⁷ Fundamental Law, ch “Freedom and Responsibility”, Art XIV, p 1

¹⁸⁸ Utv., s 1, p 2

¹⁸⁹ Cf. Utv., s 10, as well as GD No. 101 of 1998, ss 10/A.–10/E.

¹⁹⁰ Fundamental Law, ch “Freedom and Responsibility”, Art XXVII, p 1

¹⁹¹ Utv., s 1, p 1

¹⁹² *ibid*, s 1, pp 3–4. Invalidity of the travel document only results in its withdrawal (cf. Question 7), cf. Utv., s 19, p 1.

replacement travel document in these cases or if it has expired, if they do not have a valid ID card.¹⁹³

(4) EEA nationals shall be required to obtain a replacement travel document that was lost, stolen, destroyed or has expired, if they do not have a valid identity card.

The possible sanction for failing to possess a valid travel document is expulsion (“kiutasítás”). It should be noted that the proceeding remains within the framework of public administration and administrative and labour courts. Although Act No. C of 2012 on the Penal Code also defines “expulsion” as a punishment, this is a term for criminal law, whereas “expulsion” as discussed here is an administrative proceeding.¹⁹⁴

The Act No. I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence (Szmtv) alleges that the right of free movement and residence of these persons may be restricted in compliance with the principle of proportionality and based exclusively on the personal conduct of the individual concerned, where such personal conduct represents a genuine, present and serious threat affecting public policy, public security, national security or public health. S 34 excludes this possibility in two cases. (1) Foreign nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the s/he is likely to be subjected to persecution on the grounds of his race, religion, nationality, social affiliation or political conviction, nor to the territory or the frontier of a country where there is substantial reason to believe that the expelled foreign national is likely to be subjected to dispositions defined in the Fundamental Law, Art XIV (*non-refoulement*) (2) Any foreign national whose application for refugee status is pending may be turned back or expelled only if their application is refused by final and executable decision of the refugee authority.

With regard to these persons, competent authorities may expel an EEA national who: (1) refuses to comply with their duty to leave the territory of Hungary within the prescribed time limit; b) does not have the right of admission or residence, and who has provided false data or misleading information to the competent authority to verify their right of residence.¹⁹⁵ Additionally, besides the expulsion order, the obligation of the person to exit the territory of Hungary also has to be pronounced.¹⁹⁶

Measures protecting the persons during the proceeding of the immigration authority concerned include the following. (1) Those who lawfully reside in Hungary for more than ten years, or minors cannot be expelled from Hungary, except if the expulsion occurs in the interest of the child.¹⁹⁷ Persons with the right of permanent residence cannot be expelled, either.¹⁹⁸ (2) The measure may be imposed after weighing the following criteria: a) the nature and gravity of the crime committed (if any); b) the age and health condition of the person affected; c) the family situation of the person in

¹⁹³ Szmtv., s 28, pp 1 and 4 respectively

¹⁹⁴ Act No. C of 2012 on the Penal Code, s 33, p 1, item i)

¹⁹⁵ Szmtv., s 40, p 2, items a–b)

¹⁹⁶ *ibid*, s 41, p 1

¹⁹⁷ *ibid*, s 42, p 1, items a–b)

¹⁹⁸ *ibid*, s 40, p 5

question, duration of the family relationship; d) number of children of the person in question and the ages of the children, relations with the children (modes, how often; e) if there is another State where there are no legal obstacles for exercising the right to family reunification, the difficulties which the family members are likely to face if they had no other choice but to take up residence in that country; f) the financial situation of the person affected; g) the duration of residence in Hungary of the person in question; h) the social and cultural integration of the person in question, and the extent of his/her links with the country of origin.¹⁹⁹ This resolution cannot be appealed.²⁰⁰

In the event of judicial review, the court shall adopt a judgment within eight days of receipt of the petition.²⁰¹ If the expulsion is ordered by the court, the authority adopts a ruling against which an excuse can be initiated. If the obstruction is grounded in reasons described in Szmtv., s 34, the expulsion is declared non-enforceable by the sentencing judge (such as for). In such a case, the person expelled has the right to appeal directly to the sentencing judge to declare the expulsion non-enforceable, either directly or through the immigration authority (which attaches its opinion, and forwards it without undue delay). The enforcement of expulsion shall be suspended for the duration of the proceeding of the sentencing judge.²⁰² Furthermore, if an expulsion ordered by court, apart from imprisonment, is enforced more than two years after being issued, the competent authority shall re-submit the case to the same court for review. The court is required to check as to whether any material change occurred in the circumstances of the person expelled since the expulsion order was adopted, or as to whether the person concerned remains to constitute a serious and genuine threat to public policy or public security, and shall adopt a decision whether to retain or lift the expulsion order.²⁰³

The obligation to leave the territory of Hungary must be fulfilled until the last day of the month after being declared operative.²⁰⁴

During the proceeding, two further sanctions can be identified. First, the competent authority might take away the travel document of the EEA national, against which there is no legal recourse.²⁰⁵ Second, the costs associated with expulsion must be borne by the person expelled. Where the expulsion cannot be carried out because the person liable to bear the costs does not have the financial means necessary, the competent authority shall advance the costs of departure.²⁰⁶

Question 20 – Grant of consular protection to EU citizens not in possession of valid travel documents

¹⁹⁹ *ibid*, s 44, items a–h)

²⁰⁰ *ibid*, s 46, p 1

²⁰¹ *ibid*, s 46, p 1 . The person is provided the opportunity to present their views in person in the hearing if requested. A personal audience is not required if they cannot be reached at the address on record, or have moved to a place unknown. Cf. Szmtv., s 46, p 2

²⁰² *ibid*, s 48, pp 1–4)

²⁰³ *ibid*, s 49, pp 1–2)

²⁰⁴ *ibid*, s 61/A.

²⁰⁵ *ibid*, ss 47/A., 48/A.

²⁰⁶ *ibid*, s 62

- ✓ In practice, is in your country consular protection granted by other countries to mobile EU citizens that are found not to be in possession of valid travel documents?
- ✓ If available, please include in your answer any figures, statistics and/or salient examples with regard to the occurrence of the grant of consular protection in such cases.

Since the majority of persons expelled from Hungary are TCNs, and it can be inferred from the data of BMBÁH that the actual figure per country per year is also consistently low, consular protection for EU citizens is sparse and difficult to study.²⁰⁷ Otherwise, consular offices provide much information on their website, and they are also allowed to issue temporary passports for their citizens in such cases.

Question 21 – Possible documentation-related obstacles suffered in travelling with minors

- ✓ Are the additional documentation requirements (if any) imposed on minors travelling alone, travelling with adults who are not their legal guardian, and/or travelling with only one parent, known to cause substantial hindrances to mobile EU citizens in practice?

If a TCN person fulfils the criteria of the Schengen Border Code,²⁰⁸ as well as possesses a visa (unless said otherwise by a European Community legal act, an international treaty, Harmtv. or a Government Decree issued upon authorization included therein), they may enter the territory of Hungary and stay for up to three months within a period of six months from the time of first entry (“a stay not exceeding three months”). There is no further (documentation) provision for children.²⁰⁹

PART V – ACTUAL OR POTENTIAL OBSTACLES FOR TCN FAMILY MEMBERS

Introduction

Not only EU citizens, but also their TCN family members may experience difficulties in their access to and use of travel documents, either de jure or de facto; those difficulties may moreover be condoned by EU law, or expressly condemned as incompatible with the rules applicable to the relevant situation. A distinction can be drawn between cases in which TCN family members carry the (optional) EU residence card with them when

²⁰⁷ Let us take the year 2015 (January to November) as an example. According to the statistics provided by BMBÁH, the six most numerous nationalities in expulsion proceedings were Syrian (450), Kosovar (318), Iraqi (106), Albanian (68), Turkish (45), Serbian (39) and Moldavian (17), out of a total of 1481. This means that for *any* other country, the number of persons remains below 17. The highest number belongs to Romanians (62 out of 972 court decisions). In addition, there is no data on expulsions of persons with Union citizenship in major case law databases in Hungary, either.

²⁰⁸ 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

²⁰⁹ See also *supra*, note 156.

travelling (alone or together), or when they are doing so while not in possession of that document; the legal consequences vary, depending on the scenario at hand.

Question 22 – Possible documentation-related obstacles suffered by TCN family members with residence cards

Background example (fictitious)

Wen-ling, the Chinese spouse of a Dutch national living in Finland, has been issued an EU family member's residence card in Finland. Wen-ling and her husband wish to travel to Romania. As long as she is in possession of a valid passport and an EU family member's residence card, the latter country does not require her to have obtained of an entry visa. However, if she were to travel alone, she is required to have acquired such a document beforehand.

- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country and in possession of a family member's residence card?
- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country and in possession of a family member's residence card, issued by the Member State where the family member is living with the EU national?
- ✓ Does your country require the possession of a family member residence card for third country national family members of EU nationals of another Member State travelling alone on domestic flights?²¹⁰

Szmtv., s 3, p 4 declares that “[t]he persons referred to in paragraphs (2) and (3) [i.e., TCN family members accompanying a EEA or Hungarian national, or joining an EEA or Hungarian national residing in Hungary, as well as TCNs who are dependent on or for a period of at least one year have been members of the household of a Hungarian citizen, or if serious health grounds require the personal care of that family member by the Hungarian citizen] may enter the territory of the Hungary without a visa, provided that they hold an official document specified in this Act certifying the right of residence, or a residence card issued by States who are parties to the Agreement on the European Economic Area to TCN family members of EEA nationals.”²¹¹

²¹⁰ There are no domestic flights in Hungary.

²¹¹ Szmtv., s 3, p 4 . It is interesting to note that for the clause which the Consular Services of the Government of Hungary translates as “*provided... or...*”, in which “or” clearly expresses disjunction, the Hungarian text uses the word “*illetve*”. “*Illetve*” is a misleading expression in the Hungarian (legal) semantics, since it carries the meaning of both “and” (conjunction) as well as “or” (disjunction), requiring courts and authorities to clarify its supposed meaning in several cases; such an example can be seen in this case as well.

In other words, third-country nationals possess the right to entry upon possession of a family member's residence card, irrespective of whether they travel with ("accompany") or without ("join") their EEA or Hungarian national family member.²¹²

Question 23 – Possible documentation-related obstacles suffered by TCN family members without residence cards

- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when they are travelling together with those family members to your country, and not in possession of a family member's residence card?
- ✓ Does your Member State require an entry visa of third country nationals that are family members of EU nationals, when travelling alone to your country, and not in possession of a family member's residence card?

Szmtv. does not rule out the possibility of entering Hungary visa-free even if the TCN is not in possession of a family member's residence card. In order to do so, TCNs have to possess "*a document specified in this Act certifying the right of residence*". The Act enumerates three types of this document:

(1) the document certifying the right of residence for a period not exceeding ninety days, for a planned residence.²¹³ This document is available both for EEA nationals as well as their TCN family members.

(2) the document certifying the right of residence of third-country national family members for a period exceeding three months ("residence card").²¹⁴

(3) the document certifying the right of permanent residence of EEA nationals and family members ("permanent residence card").²¹⁵

PART VI – ANY OTHER OBSTACLES

Question 24 – Other obstacles

- ✓ Are there any other *de jure* or *de facto* obstacles in your country as regards the acquisition or use of travel documents not addressed in your responses to the previous questions?

(Again, the most interesting data for answering this final 'catch-all' question may perhaps be gleaned from diplomatic offices of other Member States in your country (or national complaint bodies such as Ombudsmen), or by contacting a selection of EU citizens to learn which specific other problems they have encountered.)

²¹² In addition, they are still required to have a valid travel document, according to Szmtv., s 3, p 3.

²¹³ *ibid*, s 20, p 1

²¹⁴ *ibid*, s 22, p 1

²¹⁵ *ibid*, s 24, p 1



Based on EU citizens' experience, one of the most common obstacles is the time that it takes to obtain travel documents for newborn children, which results from the length of time required to receive a copy of the birth certificate issued by the Hungarian authorities, when the child was born in Hungary. Based on experience, it seems to take longer to receive the Hungarian birth certificate when the child has a foreign nationality, than when she is a Hungarian citizen. We have no knowledge of further legal or practical obstacles.



List of Relevant National Provisions²¹⁶

Act No. XII of 1998 on Travelling Abroad

Act No. CXL of 2004 on the General Rules of Administrative Proceedings and Services

Act No. I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence

Act No. II of 2007 on the Admission and Right of Residence of Third-Country Nationals

Government Decree No. 86 of 1996 (VI. 14.) on the Protection of Confidential Documents

Government Decree No. 101 of 1998 (V. 22.) on the Implementation of Act No. XII of 1998 on Travelling Abroad

Government Decree No. 414 of 2015 (XII. 23.) on the Rules of the Issuance of the Personal Identity Card and Standard Facial Image and Signature Recording

²¹⁶ Legislative acts of Hungary are available on the website of <http://net.jogtar.hu/> and <http://njt.hu/>, both of which include all and only those in force. Certain acts are available in English as well, such as on <http://konzuliszolgalat.kormany.hu/>, or <http://www.refworld.org/>, although they are generally not updated regularly. I used both websites to find translations for legal expressions.