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To Vice President of the European Commission, Commissioner for Justice, Fundamental Rights, and Citizenship Ms. Viviane Reding

Subject: Dutch Passport Law and Regulation (EC) on biometrics in travel documents

Dear Mrs. Reding,

Quality of fingerprint storage in the Netherlands

On April 25th 2011 I wrote you a letter about the Dutch Law on Passports/ ID-cards and digital Travel document Registry, informing you about the hearing in Dutch Parliament on April 20th 2011 which made undoubtedly clear that at least 21% of the fingerprint registrations in the Passport/ID-card documents and connected Travel-document Registries proved not to match with the fingerprints of the citizen they are supposed to belong to in case of 1 on 1 verification¹

On April 26th 2011 the Dutch Minister of Interior Affairs himself wrote a letter to Parliament explaining that he had decided to stop the storage of fingerprints (in case of passport/ID-card distribution) because of the technical failure of the registration system. On April 27th 2011 he told the members of Parliament that he had received information which indicated that the percentage of mismatches by verification was even 25% (at that time concerning 1 million Dutch civilians). He concluded that 'fingerprint technology was that bad that the already registered fingerprints where not usable for verification or identification purposes².

Nevertheless the storage of fingerprints has not stopped. Storage of unqualified data in the travel documents (that are valid for five years) is still continuing. As is the storage in the databases (only for reduced time instead of 11 years), storage of log/traces of the data (of which is not even clear whether it will be technically possible to destroy them), possible secret storage by security intelligence services and storage by the international acting³ company Morpho (Sagem), the manufacturer of the travel documents who is also responsible for maintaining the registration-systems and by contract authorized to use the data for investigation purposes.

The goal of the fingerprint registration by Regulation (EC) No 2252/2004 and subsequently 444/2009, was to improve the protection of the borders of the Schengen area⁴. 'Render the travel document (to be - sic) more secure and establish a more reliable link between the holder and the passport and the travel document as an important contribution to ensuring that it is protected against fraudulent use'.

The general questions this provokes are:

1) How on earth can travel documents with (at least) 25% of them integrated with unreliable biometric fingerprint registrations contribute to 'achieve enhanced harmonised security standards for passports and travel documents to protect against falsification' or 'establish a reliable link between the genuine holder and the document'?

2) As improvement of the fingerprint technology, according to the Dutch Minister (A.O. 27-4-2011⁵) is no option for now or the near future, is continuation of the storage of these personal data in this situation (if at all) in any way according to the European Convention of Human Rights, to the arrests of the European Court of Human Rights (S&Marper 2008 EHRM & arrest W. vs Nederland 20 January 2009⁶), to the Charter of Fundamental Rights of the EU and to the *Data Protection Directive 95/46/EC* (and the new comprehensive approach on personal data protection in the European Union)?

Our government⁷ and Dutch mayors⁸ (responsible for the request and distribution of national travel/identity documents)⁹, insist that the EU Regulation orders to continue with the storage of fingerprints nevertheless the failure of minimum quality fingerprints.

Defending this opinion by reasoning that the probable future hazard of risk was foreseen by the Regulation 'because use of biometric data for ID purposes is by definition a calculation of probability methods. By a problem-solving approach that works backward from the goal or expectation of what is to happen, regarding that as 'evidence' that in case there is no new situation therefore there is no reason to doubt the effective positive results. Even when 'there may be cases when verification is not possible'¹⁰.

The goal-driven thinking cumulated on October 27th 2011 in the recent plea of the attorney of State (and most of the mayors) that the Regulation art.8 does only forbid to incorporate other data, not wrong data, and mismatching fingerprints are not to be regarded as 'further information'¹¹.

My questions to you are: Please make an end to this nonsense. More specific: will you please make a statement that storage of fingerprint data in documents that do not correspond to the fingerprints of the person related to that document is NOT ordered by Regulation (EC) No 2252/2004 and subsequently 444/2009, NOT improving the safe guarding of the Schengen area, NOT according the rules of data protection of sensitive personal data. That in fact storage of mismatching data activates insecurity for the individuals involved (not to be identified as themselves or regarded as somebody else) and the EU community in general. And please take care that this way of, unnecessary, non-proportionally, no social pressing-need serving, irresponsible data storage comes to an end. And please do support those civilians who not only refuse to submit themselves to this illegal suppressing system but even consider their refusal as a obligation due to defend the respect for the fundamental Human Rights.

Biometric storage in Travel-document databases for juridical and intelligence purposes.

At 25-4-2011 I also informed you about the sneaky way by which our government is not transparent to the civilians in which way the biometric data in the travel document registers can be used for juridical purposes and for security-intelligence services.

The situation for the moment is that the Passport law is not only non-transparent to the civilians and parliament, but even for judges in court. The (possible) use by AIVD/MIVD¹², lately confirmed by the Ministry on September 22th 2011¹³ was regarded to be impossible by judges in two court cases resulting in the judgment that objection to this use are no substantive complaint (Utrecht & Leeuwarden). At October 27th 2011 the lawyer of the mayor of Amsterdam made a new move by using the argument that the use of the digital database by AIVD/MIVD was effectively not to be regarded as using the data 'because they could get those data on paper' (not mentioning the possibility of their legal authorization of even making a automatic copy of every registered data by RAAS or database of the producer of the documents Morpho.

NB: The AIVD itself warned against the use in their annual report of 2009.

Use of the data for juridical purposes is in a sneaky way systematically denied by the authorities. Primarily by not answering questions on the use at this very moment, but always

giving the explanation how it will be organized in the future (when the not yet operational part of the Passport law will be developed). Secondly (if denial doesn't stand) by a hide and seek of the words 'asking for data'¹⁴ by police and justice is not allowed, and denying that applying for them (allowed) to make inquiries for identification of suspects is also a way of juridical use.

I urgent request you to take notice of this, and make sure that the investigation you ordered will make clear that our government organizes the juridical use of biometric data collected for the purpose of travel documents and refuges to be transparent about that use.

I kindly ask you to answer my questions,

Yours sincerely,

J.M.T.(Miek) Wijnberg - President of the civil rights foundation Vrijbit (www.vrijbit.nl)

¹ 20-4-2011 Mr Meesters- president NVVB & director project B&B Rotterdam

² Use for identification giving a much higher rate of mismatches than ¼ by verification

³ Mopho/Sagem subjected by the US Patriot-Act while having business establishment in USA

⁴ The Court of Justice of the European Union:

Arrest: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0137:NL:HTML>

⁵ 27-4-2011, 25 764 Reisdocumenten Nr. 47 Verslag van een Algemeen Overleg

<https://www.vrijbit.nl/dossier/registratie/dossier-paspoortwet/item/download/112.html>

⁶ <http://bit.ly/uyCjOz>

⁷ Attachment my request dd.16-8-2011 and rejection of the minister of interior affairs dd 3-10-2011

⁸ <https://www.vrijbit.nl/dossier/registratie/dossier-paspoortwet/item/download/142.html>

⁹ Court Den Haag 18-5-2010 LJN:BM6929

Maastricht 25-2-2010 LJN:BP6688

Utrecht 15-6-2011 LJN:BR2009

Den Haag 23-3-2011, LJN:BP8841

Leeuwarden 16-6-2011,LJN:BQ8032

Leeuwarden 9-8-2011 LJN BR4658

Maastricht 29-8-2011, LJB BT7650

Amsterdam 29-8-2011,LJN:BR7082

¹⁰ Plea 27-10-2011 Jongelenen vs mayer of Amsterdam

¹¹ (8) With regard to the personal data to be processed in the context of passports and travel documents, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1) applies. It should be ensured that no further information shall be stored in the passport unless provided for in this Regulation, its annex or unless it is mentioned in the relevant travel document.

¹² AIVD (regular) MIVD(military) Intelligence – and security Services

¹³ <https://www.vrijbit.nl/dossier/registratie/dossier-paspoortwet/item/download/137.html>

¹⁴ 22-9-2011 answer WOB question B13

<https://www.vrijbit.nl/dossier/registratie/dossier-paspoortwet/item/download/137.html>