

ARTICLE 29 Data Protection Working Party



Brussels, 10 DEC. 2007
D(2007) 17402

Mr Jean-Marie CAVADA
Chairman of the LIBE Committee
European Parliament
Rue Wiertz
B-1047- Brussels

Dear President

Subject: Your letter of 4 July 2007 on EU passports

Further to your letter of 4th July of this year, the Article 29 Working Party has carried out an in-depth survey in respect of the implementing practices followed by Member States as regards Regulation no. 2252/2004 – setting out standards for security features and biometrics in passports and travel documents issued by Member States (EU and EEA).

The data protection authorities represented in the Article 29 Working Party have provided the requested information, which is summarised in the attached Table for your convenience. This Table is not to be regarded as exhaustive, since implementation of the requirements introduced by the Regulation at issue is still in progress – with particular regard to the collection and inclusion of fingerprints in passports and/or in a centrally managed database. Additionally, it should be recalled that data protection authorities are not always involved in the domestic implementing activities. Accordingly, the information was collected from the competent domestic authorities.

Generally speaking, it appears that – despite the seemingly divergent approaches – the Regulation has been implemented in strict compliance with the relevant provisions, as well as in accordance with the technical specifications that the Commission adopted subsequently.

In particular, the national legal acts adopted so far seem to confirm that fingerprint information is used to verify identity. In most Member States, the information is not stored in centralised data bases as it is only kept in the passport chip. However, it should be pointed out that in several Member States the applicable legislation has not yet been finalised, so no final picture can be provided at the moment.

Similarly, it is difficult to provide, at this stage, a comprehensive reply to the questions concerning “enrolment” procedures, the safeguards for individuals unable to provide the requested information, security measures applying to biometric data, and the possible establishment of a European standard/system for matching.

As regards question 1, namely, which authorities are or will be given access to the biometric data, how access is organized and which specific purposes are sought via access to the data, reference is made generally to the authorities competent for issuing passports at both central

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an Independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Civil Justice, Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 06/80..

Website: http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

and local level, those competent for border controls, and those competent for controls on individuals for identification purposes.

Access is or will be enabled exclusively for the purposes referred to in the Regulation (article 4.3) and will consist of the on-site matching of the holder's biometric data with the data stored in the passport chip.

To date, practically all Member States have included only the holder's facial image in the passport and in the respective chip, and have postponed the inclusion of fingerprint information – which is actually envisaged by the Regulation. Several Member States have provided for or are considering the creation of a centralised database to collect all the data related to the procedures for issuing, renewing and/or withdrawing passports.

However, there are plans to also include fingerprint information in the said database. Several Member States have yet to make decisions on this point.

At present, it does not appear that Member States plan to request the inclusion of additional biometric data other than those set out jointly at European level.

Regardless of the above, it must nevertheless be stressed that the legal framework set out in Regulation 2252/2004 requires Member States to comply with the obligations introduced as to the purposes, the type of data and the technical systems referred to therein, as well as in the specifications adopted by the Commission. If a Member State intends to introduce requirements additional to those laid down in Regulation 2252/2004, the specific and appropriate legal framework ensuring respect for Article 8 of ECHR must be provided.

The Article 29 Working Party has expressed its opinion and voiced its concerns about the increasing use of biometrics for identification purposes on various occasions, emphasizing the need for wide public debates and for paying due attention to the social implications of any decisions in this field in particular, as regards the collection and storage of biometric data in central databases. Reference can be made specifically to Opinion no. 3/2005 of 30 September 2005 (WP 112), where the Working Party spelled out its views on the implementation of Regulation n° 2252/2004.

As for enrolment procedures and the safeguards applying to individuals, most Member States have not yet developed established practices – which confirms the concerns already pointed out by the Article 29 Working Party – as they have not yet started collecting fingerprints. In some Member States there are, however, ad-hoc regulations that allow passports to be issued in spite of enrolment-related difficulties – by adding a specific notice to the document where appropriate.

Indeed, setting out clear-cut enrolment provisions is of the utmost importance. It should be ensured that identification data are matched with biometric data in a secure environment – as a rule, under the responsibility of the public authorities issuing the document, so as to prevent identity theft and/or mismatches.

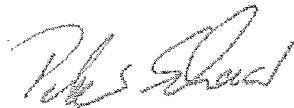
Equal importance should be attached to ensuring that the whole procedure for creating and issuing passports – from printing to initialisation of the individual documents – is controlled and certified on the basis of the aforementioned security measures (i.e. BAC as for passports bearing no fingerprints, and Extended Access Control for fingerprints passports).

As stated in the opening remarks, since several Member States have not yet passed the national legal measures and not yet decided on some of the options reflected in your questions, the information provided in this letter can only be provisional.

I trust that this information will be helpful, especially in the light of the more detailed replies summarised in the Table.

I wish to thank you for your letter and cannot but reiterate that the Working Party and myself, within the scope of the competences allocated, follow this issue and are ready to contribute to the appropriate implementation of the Regulation as well as to monitoring its ongoing transposition.

Yours sincerely,



Peter Schaar
Chairman

Enclosure

Copy: Mr. Franco Frattini, Vice President of the European Commission
Messrs Rui Pereira and Alberto Costa (Presidency of the Council)
Mr. Peter Hustinx, European Data Protection Supervisor
Mr. Carlos Coelho (EP Rapporteur)