



Tweede Kamer

DER STATEN-GENERAAL

Committee on the Interior

Ms C. Malmström
Member of the European Commission
Wetstraat 200
BE-1049 Brussels, Belgium

COURTESY TRANSLATION

Town/city and date The Hague, 2 June 2014
Subject: Letter in response to the political dialogue on EU legislation concerning biometric data in passports

Dear Ms Malmström,

Following the exchange of letters between yourself and the Minister of the Interior and Kingdom Relations, concerning the European legislation on biometrics in identity documents, the Standing Committee on the Interior of the House of Representatives has decided to send you a letter to open a political dialogue with the European Commission.

This letter contains comments and questions posed by a number of parliamentary groups in the House of Representatives on the currently applicable legislation, being regulations no. 444/2009 and 2252/2004 on standards for the security features and biometrics in the passports and travel documents issued by Member States.

Comments and questions of the parliamentary groups in the House of Representatives

The representatives of the **VVD** (Volkspartij voor Vrijheid en Democratie, liberal party, 41 out of 150 seats) comment that various problems have already been encountered with biometrics in passports. They dispute that biometrics in passports is an effective solution. In its letter of 9 December 2013, the European Commission indicates that it is willing to take all necessary measures to ensure the protection of the citizens of Europe. Can the European Commissioner explain how she thinks such measures should take form in practice and how long this will take?

The representatives of the **VVD** ask why the European Commission is not prepared to at least order an investigation into the effectiveness of fingerprinting and facial recognition in the passport chip. These members also wish to know why the European Commission does not see any reason to review the usefulness and necessity of the currently applicable European legislation.

The **VVD** representatives wish to emphasise that the European Parliament did not yet have any co-legislative powers at the time that regulations 2252/2004 and 44/2009 were decided upon. These representatives therefore call on the European Commissioner to take the doubts of the national parliaments and Member States about the effectiveness of these regulations seriously.

The representatives of the **PvdA** (Partij voor de Arbeid, Labour Party, 38 out of 150 seats) comment that the dialogue between the Minister and the European Commissioner does not sufficiently consider the effectiveness of the current biometrics that must be included in passports. These representatives would like to know whether the effectiveness of the current biometrics is being reviewed and/or evaluated and, if so, what information this has produced thus far.

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The representatives of the PvdA would also like to know whether and how the requirements of travel documents are being discussed in international fora. Are biometrics being discussed on international level and what has resulted from these discussions?

The representatives of the PvdA are interested to learn about the (new) European Commissioner's vision on the further reduction of identity fraud. How will this issue be addressed during the coming period and will the effectiveness of both current and alternative forms of biometrics in travel documents be subjected to an open and critical review?

The representatives of the **CDA** (ChristenDemocratisch Appèl, Christian party, 13 out of 150 seats) are proponents of the use of biometric identifiers in passports and travel documents as a means of preventing passport forgery and fraud, in particular by illegitimate users. However, these representatives do believe that a government that requires and records such biometric data has a responsibility to recognise the risks that this entails to citizens and to prevent these risks as much as possible.

As such, the CDA representatives were surprised that, in her letter of 9 December 2013, the European Commissioner ignored or only very briefly responded to the risks pointed out by the Minister of the Interior and Kingdom Relations with regard to the inclusion of an RFID chip and biometric identifiers in passports and other travel documents. This does not only concern risks for individual citizens that could become the victims of identity fraud, it also concerns risks of a more fundamental nature, involving infringements of privacy in general.

The CDA representatives ask the Commissioner to respond to the Court's comment, "that even if problems arise in individual cases of fingerprint checks, this [risk to privacy] is not prohibitive, but will only mean that the competent authorities will pay closer attention to the party concerned and scrutinise them more thoroughly." These representatives ask the European Commission if it should not be considered undesirable that an individual is repeatedly subjected to close scrutiny because, through no fault or responsibility of their own, there are problems when their fingerprints are checked?

The CDA representatives ask the European Commissioner whether she shares the opinion of the Minister of the Interior and Kingdom Relations, that Member States should be able to have legislation and regulations for their own citizens that enables the use of the collected and stored fingerprints for other purposes. These representatives ask how this stands in relation to the statement made by the European Court "that the fingerprints may only be stored on the passport itself and may only be used for the purpose of the regulation, namely to prevent passport forgery and fraud".

The representatives of **D66** (Democraten66, social-liberal party, 12 out of 150 seats) would like to enter into a dialogue with the European Commission on European legislation with regard to biometrics in passports. They have a number of doubts which they hope will be acted on by the European Commission.

The representatives ask whether the biometric identifiers will actually achieve the expected result: the prevention of identity fraud. There is a high frequency of unreadable fingerprints, the preparatory process is subject to error and the chips are relatively sensitive to interference. As Sophie in 't Veld already commented (on behalf of ALDE) in her oral questions of 12 April 2012, only a few dozen instances of fraud are identified in the Netherlands each year out of a population of almost 17 million inhabitants. In the knowledge that the system is hampered by many shortcomings, can the inclusion of biometrics in passports and other travel documents still be justified?

There are also further concerns as to the protection of the biometric identifiers that are recorded. A chain is only as strong as its weakest link. Even if fingerprints are not stored in a central repository, the data can still be copied during the processing phase. The readable character of the chip also entails an inherent privacy risk. Although the European Commissioner comments that she is not aware of any cases whereby the data on a chip have been changed, she does admit that these data can be copied and that this has happened before. A stolen or lost passport could thus

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entail a risk of misuse of fingerprints. Copied fingerprints could go on to be used in ways and places that the physical owner will not condone, and an innocent party could come to be seen as a culprit. Obviously, fingerprints can also be taken from innocent parties in other ways, but this system makes it all too easy for parties with malicious intent. It is also the question, considering the extension of the period of validity of passports to ten years, whether the security of the chip will continue to meet the highest standards for this entire period.

In short, ten years after the introduction of this regulation, there are now major doubts about the necessity and effectiveness of the system and the degree to which privacy rights are guaranteed. A thorough review of the regulation is desirable. It must be considered whether the inclusion of biometrics on a chip in a passport is still necessary. If this is so, because less far-reaching and more targeted methods prove to be insufficient, then it must be considered how violations of privacy rights can be limited as much as possible, and the protection of the data recorded in the passport and other travel documents must be sufficient to preclude any real risk of misuse, theft or fraud. Even if no changes prove necessary, such a review will help to provide answers to the questions that have arisen and alleviate the unrest that has developed.

The Committee on the Interior looks forward to your response and would very much appreciate your reply as soon as possible, but at the latest within three months of the date of this letter.

Yours sincerely,

Chair of the Standing Committee on the Interior,

M.A. Berndsen-Jansen

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