

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



Report on The Netherlands

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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 (*nooddokument*) 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 (*dienstpaspoot*) 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 (*vervalenverklaring*) 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 (*vervalenverklaring*) 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 (*vervalvenverklaring*) 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 (*vervalvenverklaring*) 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#TiteldeelI_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 not 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://verenigdkoninkrijk.nlbassade.org/binaries/content/assets/postenweb/shared/checklists-paspoorten/checklist---paspoort-eerste-aanvraag-minderjarige> > accessed 21 February 2016.

⁴⁹ See < <http://verenigdkoninkrijk.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 notably the central

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.

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://deelink.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 Reparatiwet < <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> > 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.officiëlebezoekingen.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.eu/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](https://eclis.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](https://eclis.nl/RBSGR:2009:BJ4210), par. 2.17

¹⁰⁹ District court The Hague, 20-3-2013, [ECLI:NL:RBAMS:2013:1344](https://eclis.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://kenia.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>