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Judgment of the Court in Case C-61/22 | Landeshauptstadt Wiesbaden

The mandatory insertion in identity cards of two fingerprints is compatible with the fundamental rights to respect for private life and to protection of personal data

However, since the regulation laying down that measure was adopted on an incorrect legal basis, the Court of Justice declares it invalid, while maintaining its effects until, at the latest, 31 December 2026 so that the EU legislature may adopt a new regulation on the correct legal basis

The mandatory insertion in identity cards of two fingerprints is compatible with the fundamental rights to respect for private life and to protection of personal data. It is justified by the objectives of combatting the production of false identity cards and identity theft and to ensure the interoperability of verification systems. However, the Court declares the regulation laying down that measure to be invalid on account of the fact that it was adopted on an incorrect legal basis, and therefore, in accordance with the wrong legislative procedure. Because of the serious negative consequences of the regulation being invalid with immediate effect, the Court is maintaining the effects of the regulation until the entry into force of a new regulation, by 31 December 2026 at the latest.

A German citizen is disputing before a German court the refusal by the City of Wiesbaden to issue him with a new identity card which does not have his fingerprints inserted into it.

The German court asked the Court of Justice to review the validity of the EU regulation which lays down the obligation to insert two fingerprints into the storage medium of identity cards ¹.

Following an in-depth examination, the Court finds that **the obligation to insert two complete fingerprints into the storage medium of identity cards constitutes a limitation of the fundamental rights to respect for private life and to the protection of personal data**, which are guaranteed by the Charter of Fundamental Rights of the European Union.

However, such insertion is justified by the objectives of general interest of combatting the production of false identity cards and identity theft and to ensure the interoperability of verification systems. It is appropriate and necessary to those objectives and is not disproportionate when compared with them.

In particular, in so far as it makes it possible to combat the production of false identity cards and identity theft, the insertion of two fingerprints is capable of contributing to the protection of the privacy of data subjects as well as, more broadly, to combatting crime and terrorism. Moreover, by enabling EU citizens reliably to identify themselves, it facilitates the exercise of their right to free movement and residence in the European Union. The objectives pursued by that insertion are therefore of particular importance not only for the European Union and the Member States, but also for EU citizens.

Simply inserting a facial image is a less effective means of identification than inserting two fingerprints in addition that that image, since ageing, lifestyle, illness or surgery may alter the anatomical characteristics of the face.

By contrast, **the regulation** in question **was adopted on an incorrect legal basis** ² and, therefore, in accordance with the wrong legislative procedure, namely the ordinary legislative procedure, rather than a special legislative procedure requiring, in particular, unanimity in the Council. **The Court therefore declares the regulation to be invalid.**

That being said, **the regulation being invalid with immediate effect would be likely to have serious negative consequences for a significant number of EU citizens and for their safety** in the area of freedom, security and justice. **For that reason, the Court is maintaining the effects of the regulation until the entry into force of a new regulation** with the correct legal basis, **within a reasonable time and by 31 December 2026 at the latest.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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¹ [Regulation \(EU\) 2019/1157](#) of the European Parliament and of the Council of 20 June 2019 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement.

² The European Parliament and Council adopted it on the basis of Article 21(2) TFEU, which relates to the right of EU citizens to move and reside freely on the territory of the Member States. The correct legal basis is however Article 77(3) TFEU, a more specific provision, which concerns the area of freedom, security and justice and, more specifically, policies concerning border controls, asylum and immigration. That provision lays down a special legislative procedure and in particular, unanimity in the Council.