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*Committee on Civil Liberties, Justice and Home Affairs*

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## **WORKING DOCUMENT**

on the proposal for a regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications. (COM (2006)0269)

PART II

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sarah Ludford

## 2. Cooperation mechanisms between Member States

The introduction of biometrics will impact on both Member States' consular offices and the visa applicants themselves. Member States will need additional resources in terms of premises, staff, equipment etc. For the applicants, they will have to appear in person for introducing at least the first application and this might be problematic, in particular when Member States do not have consular offices in the third country in question and/or applicants need to travel long journeys to get to a consular office. Strengthened cooperation between Member States is needed to respond to the challenge represented by the introduction of biometrics.

To overcome these problems, Commission proposed several cooperation mechanisms between Member States: limited representation; co-location; common application centres or, as a last resort, outsourcing to an external service provider. With a view to implementing the VIS, in each location Member States shall either equip their own consular offices for capturing biometric identifiers, employ one of the cooperation mechanisms described above or use outsourcing.

### 2a. Limited representation

Under this new form of representation, Member States would be able to represent each other solely for the reception of applications and the enrolment of biometric identifiers. What advantages would this present? From the applicants' point of view, wouldn't this limited representation go against the principle of "one stop shop" since he/she would need to go to one consulate for giving fingerprints and probably to another one for a personal interview etc? Who would establish the exact rules of representation such as collecting and keeping the handling fees?

### 2b. Co-location

Co-location means that staff from the diplomatic posts and consular missions of one or more Member States receive the application (including biometric identifiers) at the diplomatic post and consular mission of another Member State and share the equipment of that Member State. The framework of cooperation should be agreed among participating Member States.

Such form of cooperation is meant to help Member States in sharing the financial burden. As all operations will happen in a place protected under diplomatic status, there would be no particular added data protection problems. In practice, co-location requires that Member States have large premises. Are Member States willing to implement such a form of cooperation and if not what are the obstacles?

### 2c. Common application centres (CACs)

For this form of cooperation, consular staff of one or more Member States are pooled in one "neutral" building (not being Member States' premises) in order to receive the visa applications including biometric identifiers. As in the case of co-location, the framework of cooperation should be agreed among participating Member States.

The CACs would have the advantage of reinforcing the local consular cooperation and cost-saving for Member States as resources can be pooled and shared<sup>1</sup>. The CACs would also represent an important facilitation for the applicants in countries where the applicant has to travel a long distance to the consulate or where not all Member States are present. Moreover, it has been argued that the CACs would facilitate the determination of the Member State responsible for the application.

However, as in the case of outsourcing (see below), consular activities will take place in principle in places which are not under diplomatic protection, and this situation raises serious data protection concerns e.g. how will Member States be able to guarantee the protection of such data against a possible intervention (such as search or seizure) by the applicant country's public authorities? Moreover, there is the question of security of transport of biometric data to the responsible visa authority. Some Member States apparently question the real added value of the CACs and find the idea unrealistic. It is indeed not clear who would set the operating rules of CACs and what their status would be. Has the Commission made an assessment of all these issues?

There is a pilot project under way regarding the setting up and running of a CAC in Chisinau (Moldova), a country chosen because not many Member States are present or represented there. What are the lessons from that experiment?

#### 2d. Outsourcing to an external service provider

Finally and as a last resort (when for reasons related to the local situation it is not appropriate to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a common application centre), the reception of the visa application form and collection of biometric identifiers could be carried out by an external service provider.

The rapporteur notes with surprise that some Member States would appear to already practise outsourcing in the absence of any Community framework<sup>2</sup>. This outsourcing apparently concerns the appointment systems and collection of applications, but in the future VIS outsourcing could deal with biometrics as well. The rapporteur wonders whether in the absence of Community rules, the current practice of the Member States is in fact legal. Does the Commission proposal just provide a legal framework for a situation which already exists de facto?

The Commission proposes two forms of outsourcing:

1. outsourcing only the provision of general information on the requirements for applying for a visa and of the appointment system to a call centre (article 1B1a) and
2. outsourcing both the provision of information and the collection of applications and handling fee, supporting documents and biometric data. The external service provider then transmits the completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application (article 1B1b).

While the first form of outsourcing could be welcomed as representing practical facilitation which does not in principle have any negative impact on data protection and data security, the second form

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<sup>1</sup> Note that the introduction of the VIS has been cited as justification for raising the handling fee to 60 Euros.

<sup>2</sup> This is the case in particular for Italy which appears to be the first Schengen country to outsource some aspects of the visa issuing process to an external agency in India (VSF). Italy was apparently followed by other Schengen partners (Germany, France, Belgium, Austria, Netherlands and Portugal) and outsourcing is attracting the attention of more and more Member States.

raises problems concerning those matters. While it could indeed offer certain advantages for visa applicants in avoiding time consuming and expensive travel and for consular offices in avoiding the well-known queues at the consulate and in freeing up time for the examination of applications, there are serious data protection and data security concerns which have been already voiced by data protection authorities<sup>1</sup>. There is a possible risk of visa shopping if a particular system is used only by one or several Schengen states, and outsourcing could increase the visa costs for visa applicants. The Commission proposal clearly indicates that the total amount paid by the applicant should not exceed the handling fee; however some Member States apparently oppose this and consider that where there is an additional service, the additional costs should be borne by the applicant.

In some cases the external service providers will have to take important decisions regarding the biometrics such as whether they are reliable enough to be stored into the system, but such decisions should be a public function and the service providers should not have a margin of discretion.

Besides the particular issue of biometrics, it is also legitimate to ask whether all the other tasks enumerated under the second type of outsourcing can legitimately be done by an external service provider. For example, at first glance the reception of supporting documents sounds straightforward but problems might appear in practice. It is the consulates' task to decide whether a certain supporting document is correct or not, or if further documents are required. Involving an external service provider can make matters much more complicated for the visa applicant. Moreover, the completed visa form contains a lot of data, such as the supporting documents, which raise the issue of the confidentiality and security of documents. It also has to be discussed to what extent outsourcing can be applied in countries with a high degree of corruption. Is there not a danger that the increased security by using the VIS is compromised by outsourcing?

There are several options regarding this second form of outsourcing which should be carefully considered as regards their advantages and disadvantages: no outsourcing at all; outsourcing only the provision of information etc but without biometrics; outsourcing both the provision of information etc and biometrics but the external service provider must operate in a place under diplomatic protection; outsourcing both the provision of information etc and biometrics but under the strict surveillance of a consular official.

The rapporteur hopes that the right legal solution will be identified, one which will ensure that the system is both efficient and secure, and also takes into account the applicants' needs.

#### Conclusion:

Given the important issues in this proposal, the rapporteur believes the Commission should have done a specific extended impact assessment and not just rely on the impact assessment carried out for the VIS in 2004.

In the absence of such an extended assessment, an in-depth consideration by all institutions involved is now needed and the rapporteur believes that the expert seminar which took place on March 27th represented a good start.

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<sup>1</sup> See for example the opinion of the EDPS who strongly advised against outsourcing the processing to external service providers unless this is done in a place protected under diplomatic status.