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Committee on Civil Liberties, Justice and Home Affairs

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COMPROMISE AMENDMENT 5

Draft report **(PE 405.718v01-00)**
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Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States
(COM(2007)0619 – C6-0359/2007 – 2007/0216 (COD)

AMENDMENTS BY PARLIAMENT

to the Commission proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62 (2) *(*a) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[1],

Whereas:

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* ***Political amendments: new or replacement text is marked in bold and italics and deletions are indicated by the symbol ▌.***
Technical corrections and adaptations by the services: new or replacement text is marked in italics and deletions are indicated by the symbol ‖.

1 OJ C , , p. .

(1) The European Council of Thessaloniki confirmed that a coherent approach is needed in the EU on biometric identifiers or biometric data for documents for third-country nationals, EU citizen's passports and information systems (VIS and SIS II).

(2) In this context, the Council has adopted Regulation (EC) No 2252/2004 *of* 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States[1] as an important step towards the use of new elements, which render the travel document more secure and establish a more reliable link between the holder and the passport as an important contribution to ensuring that it is protected against fraudulent use.

(3) Regulation (EC) No 2252/2004 provides for a general obligation to give fingerprints which will be stored on a contactless chip in the passport. However, experience from tests showed that exceptions are needed. During pilot projects of some Member States it appeared that the fingerprints of children under the age of 6 seemed not to be of a sufficient quality for one-to-one verification of identity. Furthermore, they are subject to important changes which make it difficult to check them during the entire period of validity of the passport.

(4) The harmonisation of exceptions to the fingerprinting requirement is essential in order to maintain common security standards and in view of simplifying border controls. Both for legal and security reasons it should not be left to national legislation to define the exceptions from the obligation to provide fingerprints for passports and other travel documents issued by Member States.

(4a) Regulation (EC) No 2252/2004 requires biometric data to be collected and stored in the storage medium of passports and travel documents with a view to delivering such documents. This is without prejudice to any other use or storage of these data in accordance with national legislation of Member States. The Regulation does not provide a legal base for setting up or maintaining databases for storage of these data in Member States, which is strictly a matter of national law.

(5) Furthermore, as a supplementary security measure and in order to provide additional protection for children, the principle of "one person-one passport" should be introduced. It is also recommended by the International Civil Aviation Organisation (ICAO) and it ensures that the passport and the biometric features are only linked to the person holding the passport. It is more secure if every person has his/her own passport.

(5a) Taking into account that the Member States will be obliged to issue individual passports to minors and that there might be significant differences between the Member States' legislation regarding children crossing the external borders of the Member States, the Commission should examine the need for measures in order to ensure a common approach regarding the rules on the protection of children crossing the external borders of the Member States.

(6) ***Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as***

[1] OJ L 385, 29.12.2004, p. 1.

set out in Article 5 of the Treaty***. In accordance with the principle of proportionality, as set out in that Article,*** this Regulation does not go beyond what is necessary in order to achieve ***those*** objectives.

(7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark ***does not take*** part in the adoption of this Regulation and is therefore not bound by it or subject to its application. ▌ Given that this Regulation ***builds*** upon the Schengen acquis under the provisions of ***Title IV of Part Three*** of the Treaty establishing the European Community, Denmark ***should***, in accordance with Article 5 of the said Protocol, decide within a period of six months after the ***adoption of*** this Regulation whether it will ***implement it in*** its national law.

(8) This Regulation constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis[1]. *The* United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(9) This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis[2]. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(10) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the ***latters'*** association ▌ with the implementation, application and development of the Schengen acquis[3], which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement[4].

(11) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement ***concluded*** between the European Union, the European Community and the Swiss Confederation ***on*** the ***Swiss Confederation's association*** with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with ***Article 3*** of Council Decisions ***2008/146/EC***[5] and ***2008/149/JHA***[6].

(11a) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen acquis within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to

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1 OJ L 131, 1.6.2000, p. 43.
2 OJ L 64, 7.3.2002, p. 20.
3 OJ L 176, 10.7.1999, p. 36.
4 OJ L 176, 10.7.1999, p. 31.
5 ***OJ L 53, 27.2.2008, p. 1.***
6 ***OJ L 53, 27.2.2008, p. 50.***

the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis[1], which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC[2].

(12) Therefore, Regulation (EC) No 2252/2004 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

▌Regulation (EC) ***No*** 2252/2004 is amended as follows:

(1) ***Article 1(1) shall*** be replaced by the following:

"1. Passports and travel documents issued by Member States shall comply with the minimum security standards set out in the Annex.

They shall be issued as individual documents.

The Commission shall present a report on the requirements for children travelling alone or accompanied, crossing the external borders of the Member States not later than ...* and propose, if necessary, appropriate initiatives in order to ensure a common approach regarding the rules on the protection of children crossing the external borders of the Member States."

(1a) Article 1(2) shall be replaced by the following:

"*2. Passports and travel documents shall include a *highly secure* storage medium which shall contain a facial image. Member States shall also include *two* fingerprints *taken flat* in interoperable formats. The data shall be secured and the storage medium shall have sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data.*"

(2) ***In Article 1,*** paragraph 2a ***shall be*** inserted ▌:

"2a. The following persons shall be exempt from the requirement to give fingerprints:

(a) Children under the age of ***12 years.***

The age limit of 12 years is provisional. The report referred to in Article 5a shall contain a review of the age limit, if necessary accompanied by a proposal to amend the age limit.

Without prejudice to the consequences of the application of Article 5a, Member

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[1] ***Council Document 16462/06 accessible on http://register.consilium.europa.eu***

[2] ***OJ L 83, 26.3.2008, p.3.***

* ***Three years after the date of entry into force of this Regulation.***

States which in their national law, adopted before …*, provide for an age limit below 12 years may apply that limit during a transitional period until 4 years after …*. However, the age limit in the transitional period may not be below 6 years of age;

(b) persons, where fingerprinting is physically impossible."

(2a) In Article 1, paragraph 2b shall be inserted:

"2b. Where fingerprinting of the designated fingers is temporarily impossible, Member States shall allow the fingerprinting of the other fingers. Where it is also temporarily impossible to take fingerprints of any of the other fingers, they may deliver a temporary passport having a validity of 12 months or less."

(2b) Article 1a shall be inserted:

"Article 1a

1. The biometric identifiers shall be taken by qualified and duly authorised staff of the national authorities responsible for issuing passports and travel documents.

2. The Member States shall collect biometric identifiers from the applicant respecting the rights laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child. Member States shall ensure that appropriate procedures guaranteeing the dignity of the person concerned are in place in the event of there being difficulties in enrolling."

(2c) Article 2 shall be replaced by the following:

***"*Additional technical specifications *in accordance with international standards, including in particular the recommendations of the International Civil Aviation Organisation,* for passports and travel documents relating to the following shall be established in accordance with the procedure referred to in Article 5(2):**

(a) additional security features and requirements including enhanced anti-forgery, counterfeiting and falsification standards;

(b) technical specifications for the storage medium of the biometric features and their security, including prevention of unauthorised access;

(c) requirements for quality and common *technical* standards for the facial image and the fingerprints.*"*

(2d) Article 4(3) shall be replaced by the following:

***"3. Biometric data shall be collected and stored in the storage medium of passports and travel documents with a view to delivering such documents.* For the purpose of this Regulation the biometric features in passports and travel documents shall only be used**

**** Date of entry into force of this Regulation.***

for verifying:

(a) the authenticity of the document;

(b) the identity of the holder by means of directly available comparable features when the passport or other travel documents are required to be produced by law.

The checking of the additional security features shall be carried out without prejudice to Article 7(2) of Regulation (EC) No 562/2006 (Schengen Borders Code). The failure of the matching in itself shall not affect the validity of the passport for the purpose of the crossing of external borders."

(2e) Article 5a shall be inserted:

"Article 5a

The Commission shall not later than ...* submit to the European Parliament and the Council a report based on a large scale and in-depth study carried out by an independent authority and supervised by the Commission, which shall examine the reliability and technical feasibility, including through an evaluation of the accuracy of the systems in operation, of using the fingerprints of children under the age of 14 for identification and verification purposes, including a comparison of the false rejection rates occurring in each Member State and - based on the results of that study - an analysis of the need for common rules regarding the matching process. If necessary, the report shall be accompanied by proposals to adapt this Regulation."

(2f) In Article 6, the second subparagraph shall be replaced by the following:

"Member States shall apply this Regulation:

(a) as regards the facial image: at the latest 18 months

(b) as regards fingerprints: at the latest 36 months

following the adoption of the measures referred to in Article 2. However, the validity of passports and travel documents already issued shall not be affected.

As regards the second sentence of Article 1(1), it shall be implemented at the latest on…*. However, the initial validity for its holder shall not be affected."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

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* ***Three years after the date of entry into force of this Regulation.***

* ***Three years after the date of entry into force of this Regulation.***

This Regulation shall be binding in its entirety and directly applicable in ***the*** Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Joint Statement by the European Parliament and the Council concerning the need to increase the security of passports and travel documents by using secure breeder documents

Without prejudice to the competence of the Member States to issue passports and other travel documents, the European Parliament and the Council underline that the objective of enhancing the security of passports may be undermined if passports are issued on the basis of unreliable "breeder documents".

The passport in itself is only one link of a security chain starting from the presentation of the breeder documents, to the enrolment of biometric data and ending with the matching at the border check points. This chain will only be as secure as its weakest link.

The European Parliament and the Council note that there is a great diversity of situations and procedures in the Member States regarding which "breeder documents" should be produced in order to request the issuing of a passport and that normally these documents have less security features than the passport in itself, and are more likely to be subjected to forgery and counterfeiting.

The Council shall therefore prepare a questionnaire for the Member States in order to be able to compare the procedures and which documents are required in each Member State in order to issue a passport or travel document. This analysis should assess the possible need for the creation of common principles or guidelines on best practice in this area.

Joint Statement by the European Parliament and the Council concerning the study referred to in Article 5a

The European Parliament and the Council note that the Commission will carry out one single study for the purpose of Article 5a of this Regulation and Article 2 of the [draft] Regulation amending the Common Consular Instructions.