COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.3.2006
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2003/0218 (CNS)

Modified proposal for a

COUNCIL REGULATION

amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Following the Thessaloniki European Council of 19/20 June 2003, where it was confirmed that "a coherent approach is needed in the EU on biometric identifiers or biometric data which would result in harmonised solutions for documents for third country nationals, EU citizens' passports and information systems (VIS and SIS II)", the Commission presented on 24 September 2003 two proposals amending the uniform format for visas and the residence permit for third country nationals.

The Commission's intention with these proposals was twofold:

– to bring forward the final date for the implementation of the photograph from 2007 to 2005 and at the same time,

– require Member States to integrate two mandatory biometric identifiers, the facial image and two fingerprints in interoperable formats into the visa and the residence permit for third country nationals in a harmonised way, thus ensuring interoperability.

When choosing the most appropriate biometric identifiers, the results of the work of the ICAO (International Civil Aviation Organisation), which has taken the lead for the development of international standards in this respect, and of the feasibility study on the visa information system (VIS) have been taken into account.

A large consensus could be found on the biometric identifiers and the approach proposed by the Commission and a political agreement–as requested by the European Council in Brussels on 16/17 October 2003- was reached at the Council (JAI) on 27 November 2003. The proposals could not be finally adopted as the European Parliament had not yet issued its opinion. In order to demonstrate the political agreement reached, Council conclusions have been adopted which also take up the issue of the necessity of a second proposal amending the Common Consular Instruction in view of creating the obligation to enrol fingerprints and specifying the possible exceptions and which invite the Commission with the assistance of the "Committee Article 6" created by Regulation 1683/95 laying down a uniform format for visa to start working on the technical specifications necessary for the implementation of biometrics in the two documents in view of the possible practical implementation of the Regulation.

The work of the technical committee resulted in the conclusion that at this stage it is technically not feasible to integrate biometrics into the visa sticker and the sticker version of the residence permit for third country nationals, as stated in the draft Regulation (problems of durability of the chip, and interference between several chips in one passport).

As a consequence the Council invited the Commission on 24 February 2005 to amend its proposal for a Council Regulation amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals to take account of the consensus reached by the Council on incorporating biometric identifiers into residence permits in the form of a separate card within a period of 24 months, and to take account of the Council's desire to discontinue the use of residence permits in the form of stickers".

In this context, the Estonian delegation tabled the following declaration at the Council:

"The Commission should take the necessary steps to ensure that the current national developments with regard to authentication, certification, digital signature and e-Government services for third country nationals living legally on the territory of a Member State shall be taken into account."

While drafting the amendment to the proposal for a Regulation the question arises how the Estonian concern can be taken into account. The use of new technologies as e-government, digital signature etc. and the reasoning of Estonia who wishes to treat equally their citizens and third country residents giving them access to e-services via ID-cards and residence permits should in principle be supported if there are no major obstacles. Therefore a new "point 16" has been introduced in the Annex giving the possibility to integrate a contact chip into the residence permit which Member States can use for such purposes in line with the relevant data protection rules.

The insertion of this contact chip would be left optional for Member States and it should not disturb the uniformity of the format, as already now Regulation (EC) 1030/2002 gives the possibility of issuing different versions of cards (cards made entirely out of plastic, cards with paper inlay in ID1 and ID2 format). It is placed at a space set out by the amendment for the Regulation. The uniform format is amended to that effect.

Consequently, the new draft amendment includes a new prototype of uniform residence permit including a box for the possible insertion of a contact chip; the Annex refers to this box (Nr. 16).

At the same time, the proposal has been aligned with Regulation (EC) 2252/2004 on common security features and biometrics for passports and other documents issued by Member States as regards the changes adopted at the request of the Article 29 working party. In particular it has been clearly determined that the data stored on the chip can only be used for verifying the authenticity of the document and the identity of the holder.

At the meeting of the Strategic Committee on 21/22 June 2005 in Luxembourg the decision has been taken that for the time being no additional solution will be adopted for integrating biometric identifiers on the visa sticker itself or on a separate smart card. The biometric identifiers will be only stored in the Visa Information System.

As most of the Member States are currently anticipating the photo integration in the visa sticker until the end of 2005 both aims of the Commission proposal amending Regulation (EC) 1683/95 laying down a uniform format for visas are superseded.

Therefore the Commission proposal amending Regulation (EC) 1683/95 laying down a uniform format for visas will be withdrawn.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63 (3) a) thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

(1) The Amsterdam Treaty aims to establish progressively an area of freedom, security and justice and confers the right of initiative to the Commission in order to take the relevant measures on a harmonised immigration policy.

(2) It is essential that the uniform format for residence permits should contain all the necessary information and meet very high technical standards, in particular as regards safeguards against counterfeiting and falsification; this will contribute to the objective of preventing and fighting against illegal immigration and illegal residence. It must also be suited to use by all the Member States.

(3) The integration of biometric identifiers is an important step towards the use of new elements, which establish a more reliable link between the holder and the residence permit as an important contribution to ensuring that it is protected against fraudulent use. The specifications set out in the ICAO document No 9303 on machine readable visas should be taken into account.

(4) The use of new technologies such as e-government and digital signature for access to e-services should be facilitated by giving Member States the possibility to use an additional storage medium for that purpose in residence permits.

(5) This Regulation only lays down such specifications as are not secret; these specifications need to be supplemented by further specifications which may remain secret in order to prevent counterfeiting and falsifications and which may not include personal data or references to such data. Powers to adopt such supplementary specifications should be conferred to the Commission, who shall be assisted by the Committee established by Article 6 of Council Regulation(EC) n°1683/95 of 29 May 1995 laying down a uniform format for visas[3].

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1 OJ C , , p. .

2 OJ C , , p. .

3 OJ L 164, 14.7.1995,p. 1. Regulation as amended by Regulation amending Regulation 1683/95 laying down a uniform format for visas.

(6) With regard to the personal data to be processed in the context of the uniform format for residence permits, Directive 95/46/EC of the European Parliament and of the Council of 24.10.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[4] applies. It must be ensured that no further information shall be stored on the uniform format for residence permits unless provided for in the regulation, its annex or unless it is mentioned in the relevant travel document.

(7) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing interoperable biometric identifiers to lay down rules for all Member States implementing the Schengen Convention. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(8) 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 is not participating in the adoption of this Regulation, and is therefore not bound by it or subject to its application. Given that this Regulation aims to build upon the Schengen *acquis* under the provisions of Title IV of Part three of the Treaty establishing the European Community, Denmark will, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation~~,~~ whether it will transpose it into its national law.

(9) 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 association of those two States with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement[5].

(10) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 4 (1) of the Council decision on the signing, on behalf of the European Community, and on the provisional application of certain provisions of this Agreement.

(11) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1030/2002 is hereby amended as follows:

(1) In Article 1 (1), the second sentence is replaced by the following:

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4 OJ L 281, 23.11.1995, p. 31.

5 OJ L 176, 10.7.1999, p. 31.

"The residence permit shall only be issued as a stand-alone document in ID 1 or ID 2 format

(2) Article 2 (1), the following points d) and e) are added:

"d) technical specifications for the storage medium of the biometric features and the security thereof, including prevention of unauthorised access;

e) requirements for the quality of and common standards for the facial image and the fingerprint images."

(3) In Article 3, the first paragraph is replaced by the following:

"In accordance with the procedure referred to in Article 7 (2), it may be decided that the specifications referred to in Article 2 shall be secret and not be published. In that case they shall be made available only to the bodies designated by the Member States as responsible for the printing and to persons duly authorised by a Member State or the Commission. "

(4) In Article 4, the second paragraph is replaced by the following:

"No information in machine-readable form shall be included on the storage medium of the residence permit referred to in Article 4a, unless provided for in this Regulation, or its Annex or unless it is mentioned in the related travel document by the issuing State in accordance with its national legislation. Member States may include in the residence permit an additional contact chip as set out in Part 16 of the annex to this Regulation for e-services such as e-government and e-business"

For the purposes of this Regulation, the biometric features in residence permits shall only be used for verifying:

(a) the authenticity of the document;

(b) the identity of the holder by means of directly available comparable features when the residence permit is required to be produced by law."

(5) The following Article 4a is inserted:

"Article 4a

'The uniform format for residence permits shall include a storage medium containing ~~a~~ facial image. Member States shall also include fingerprints in interoperable formats. The data shall be secured and the storage medium shall be of sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data."

(6) In Article 9, the third paragraph is replaced by the following:

'The integration of the photograph provided for in point 14 of the Annex shall be implemented at the latest on 30 August 2006. The storage of the facial image as primary biometric identifier shall be implemented at the latest two years, and the storage of the two fingerprint images at the latest three years after the adoption of the respective technical measures provided for in Article 2 (1) d) and e)'.

For a transitional period of two years after the adoption of the technical specifications referred to in the third paragraph of Article 9 the residence permit may continue to be issued in sticker form.'

The Annex is amended in accordance with the Annex to this Regulation

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*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX

The Annex to Regulation (EC) No 1030/2002 is amended as follows:

(1) Point (a) is amended as follows:

(1) The first paragraph is replaced by the following;

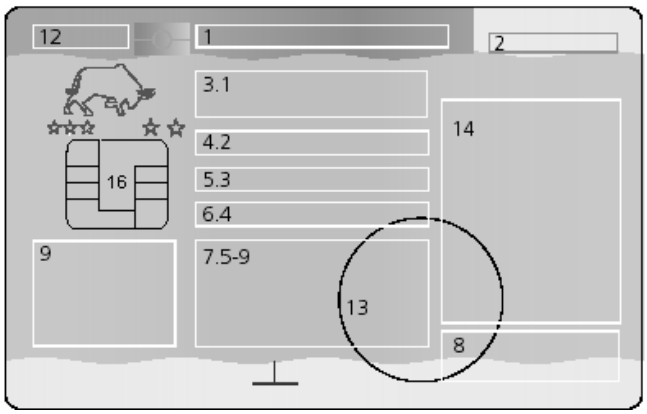
"(a) Description

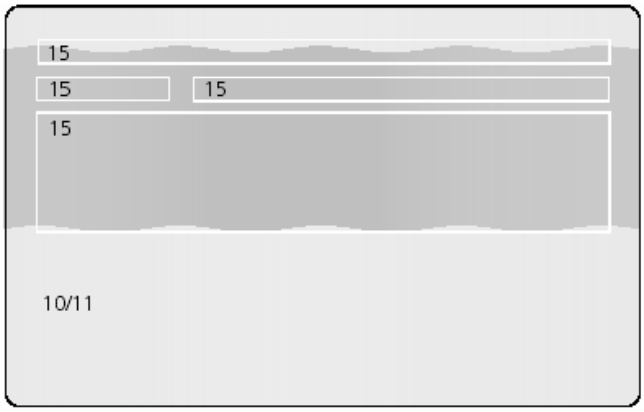
The residence permit will be produced as a stand-alone document in ID 1 or ID 2 format. It will be based on the specifications set out in the ICAO documents on machine-readable visas (document 9303, part 2) or on machine-readable travel documents (cards) (document 9303, part 3). The residence permit in sticker form may only be issued until two years after the adoption of the technical specifications referred to in the third paragraph of Article 9. It will contain the following entries:……"

(2) The following new point 16 is added:

"16. Member States may incorporate in the residence permit a separate contact chip for national use which shall comply with ISO standards and shall in no way interfere with the RF chip."

(3) The following model is to be inserted:





(4) The reference “Residence permit for third country national in sticker form” and the model are deleted with effect from the date referred to in Article 9 of the Regulation.