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Committee on Civil Liberties, Justice and Home Affairs

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***I
DRAFT REPORT

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 – C6-0166/2006 – 2006/0088(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sarah Ludford

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 – C6-0166/2006 – 2006/0088(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0269)[1],

– having regard to Article 251(2) and Article 62 (2) b) ii) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0166/2006),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2007),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
Amendment 1 RECITAL 3	
(3) The ***choice of the biometric identifiers is made in the*** [Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas]. ***This*** Regulation defines the standards for the collection of these biometric identifiers by referring to the relevant provisions set out by the International Civil Aviation Organisation (ICAO). No further technical specifications	(3) The [Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas] ***provides that fingerprints and photographs of the applicant should be stored in the VIS***. ***The present*** Regulation defines the standards for the collection of these biometric identifiers by referring to the relevant provisions set out by the International Civil

[1] Not yet published in OJ.

are required in order to ensure interoperability.	Aviation Organisation (ICAO). No further technical specifications are required in order to ensure interoperability.

Justification

This amendment only aims to clarify the text: it should be clear what the choice of biometric identifiers is and that two distinct regulations are meant.

Amendment 2
RECITAL 3 A (new)

	(3a) The reception arrangements for applicants should be made with due respect for human dignity and integrity. The processing of visa applications should be conducted in a professional and respectful manner and be proportionate to the objectives pursued.

Justification

The provision is copied from the Commission's Visa Code proposal (COM(2006)403) and slightly modified. Since the present text will probably enter into force before the new Visa Code enters into force it is important to incorporate in the present text those provisions judged indispensable for the functioning of the VIS. A general clause on the conduct of staff seems essential in particular because of the taking of biometric data as a new element in the visa issuing process.

Amendment 3
RECITAL 5

(5) Other options such as co-location, common application centres and outsourcing should be introduced. An appropriate legal framework for these options should be established, taking into account in particular data protection issues. Under the legal framework established Member States should be free to determine which type of organisational structure they will use in each third country. Details of those structures should be published by the Commission.	(5) Other options such as co-location, common application centres and outsourcing should be introduced. An appropriate legal framework for these options should be established, taking into account in particular data protection issues. ***In order to ensure the integrity of the visa issuing process any activity related to the issuing of visas, including the collection of biometric data, should take place on the premises of a Member State which enjoys diplomatic or consular protection under international law or on European Commission premises recognised by the***

	host state as inviolable. Under the legal framework established Member States should be free to determine which type of organisational structure they will use in each third country. Details of those structures should be published by the Commission ***in the Official Journal***.

Justification

Given in particular the risks for data security and data protection linked to the taking of biometrics but also the fact that the process of visa issuing is and should remain a public task (even if certain aspects are outsourced), several amendments have been tabled to ensure that any activity linked to the issuing of visas takes place in a building enjoying diplomatic or consular protection. It is important that these are Member States' buildings or delegations of the Commission, in order to ensure that the Directive 95/46 and Regulation 45/2001 are applicable and that any material is protected, e.g. from seizure.

Amendment 4
RECITAL 7

(7) ***It is necessary to make provisions for situations in which Member States' central authorities decide*** to outsource part of the visa handling process to an external service provider. Such arrangements should be established in strict compliance with the general principles for issuing visas, respecting the data protection requirements set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.	(7) ***Since the issuing of visas is by its very nature a public task, any decision taken by the central authorities of a Member State*** to outsource part of the visa handling process to an external service provider ***should only be taken if no other possibility exists and if it is duly justified***. Such arrangements should be established in strict compliance with the general principles for issuing visas, respecting the data protection requirements set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Justification

Given the whole range of consequences that outsourcing could create, it should be undertaken only as a last option and should be duly justified. The rapporteur considers it very important to state this explicitly.

Amendment 5
RECITAL 8

(8) Member States ***shall*** conclude ***contracts*** with external service providers ***which*** should contain provisions on their exact responsibilities, direct and total access to their premises; information of applicants, confidentiality and circumstances, conditions and procedures for suspending or terminating the contract.	(8) ***Any contract that a*** Member State *concludes* with *an* external service provider should contain provisions on *its* exact responsibilities, direct and total access to their premises; information to applicants, confidentiality***, compliance with data protection rules*** and circumstances, conditions and procedures for suspending or terminating the contract.

Justification

The first parts of the amendment are clarifications. The last part adds data protection as an important provision which the contracts with external service providers should contain.

Amendment 6
RECITAL 8 A (new)

	(8a) Member States should aim to organise the reception of visa applications, the enrolment of biometric identifiers and the interview in such a way that the visa applicant has to appear only once in person (one-stop-shop principle) in order to obtain a visa.

Justification

It is very important that the introduction of biometrics does not create unnecessary inconveniences for visa applicants since it is also supposed to facilitate legitimate travel. Therefore Member States should aim as much as possible to follow the one stop shop principle.

Amendment 7
RECITAL 9

(9) ***To ensure the compliance with data protection the working group created by Article 29 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the European Data Protection Supervisor have been consulted.***	(9) ***The European Data Protection Supervisor has issued an opinion in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[1] and the Article 29***

Working Party in accordance with Article 30(1)(c) of Directive 95/46/EC.

[1] OJ L 8, 12.1.2001, p. 1.

Justification

This recital has been clarified because it suggested that simply consulting the data protection authorities ensured compliance with data protection rules. In reality both the EDPS and the Article 29 Working Party raised in their opinions on this proposal a series of serious concerns.

Amendment 8
RECITAL 9 A (new)

(9a) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data applies to the processing of personal data in application of this Regulation. However, certain points should be clarified in particular in respect of the responsibility for the processing of data, of safeguarding the rights of the data subjects and of the supervision on data protection.

Justification

It is essential to explicitly state that Directive 95/46 on data protection applies to all processing of personal data in application of this Regulation.

Amendment 9
RECITAL 11

(11) In order to facilitate the procedure of any subsequent application, it should be possible to copy biometric data from the first application within a period of ***48*** months ***in accordance with the retention period laid down in the VIS Regulation***. Once this period of time has elapsed, the biometric identifiers should be captured again.	(11) In order to facilitate the procedure of any subsequent application, it should be possible to copy biometric data from the first application within a period of ***59*** months. Once this period of time has elapsed, the biometric identifiers should be captured again.

Justification

The retention time in the VIS is five years, i.e. 60 months, so a 'reuse' period of 59 months ensures that the data on the applicant is still available. In addition a longer period in which the biometric data can be reused increases the user-friendliness and reduces the workload of consulates. This is also consistent with the approach of Mr Lax in his report on the future Visa Code.

Amendment 10
RECITAL 13

(13) The Common Consular Instructions on visas for diplomatic missions and consular posts should therefore be amended accordingly.	***deleted***

Justification

This recital is unnecessary.

Amendment 11
RECITAL 14

(14) The Commission should present a report on the implementation of this Regulation two years after its entry into force, covering the implementation of the enrolment of biometric identifiers, the principle of the "first application" and the organisation of the reception and the processing of visa applications.	(14) The Commission should present a report on the implementation of this Regulation two years after its entry into force ***and every two years thereafter***, covering the implementation of the enrolment of biometric identifiers, ***the appropriateness of the ICAO standard chosen including in terms of data protection, experience with external service providers, including any problems encountered***, the principle of the "first application" and the organisation of the reception and the processing of visa applications ***accompanied, where necessary, by appropriate proposals to modify this Regulation***.

Justification

Given the importance and sensitivity of this Regulation (due mainly to the introduction of biometrics in such a huge database), it is essential that the Commission reports regularly, including on outsourcing and the ICAO standards.

Amendment 12
RECITAL 15

(15) ***The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.*** 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***.	(15) ***The objectives of this Regulation are the organisation of the reception and processing of visa applications in respect of the insertion of biometric data in the VIS. Since these objectives cannot be sufficiently achieved by the Member States the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in the third paragraph of that Article,*** this Regulation does not go beyond what is necessary in order to achieve those objectives.

Justification

Recitals 15 and 16 are brought into one single recital as is usual practice in the Commission's proposals and the text made clearer.

Amendment 13
RECITAL 16

(16) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing common standards and 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.	***deleted***

Justification

See justification for amendments to recital 15.

Amendment 14
RECITAL 16 A (new)

	(16a) This Regulation respects fundamental rights and observes the principles recognised in particular by the European Convention on Human Rights and Fundamental Freedoms, by the Charter of Fundamental Rights of the European Union and by the United Nations Convention on the Rights of the Child.

Justification

This is a standard recital in EU legislation which has an impact on fundamental rights. The reference to the United Nations Convention on the Rights of the Child is of particular interest in the present context and therefore added to the standard recital.

Amendment 15
ARTICLE 1, POINT 1, POINT (A)
Point II, point 1.2., (b) (CCI)

"A Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. The relevant provisions of 1.2 (c) and (e) shall apply. The reception and transmission of files and data to the represented consular post shall be carried out respecting the relevant data protection and security rules".	"A Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. The relevant provisions of 1.2 (c) and (e) shall apply. ***Where it receives an application the representing Member State shall create the application file in the VIS and insert the data referred to in Article 6 of the [VIS Regulation]. It shall then inform the consular post of the represented Member State of the application and the VIS entry through the communication infrastructure of the VIS as provided for in Article 14 of the [VIS Regulation].*** The reception and transmission of files and data to the represented consular post shall be carried out respecting the relevant data protection and security rules".

Justification

The underlying rationale of the idea to roll out the VIS in particular regions is that all consulates of the Member States start using the VIS at the same time. This implies that all consulates have access to the VIS. It seems therefore logical that the representing Member Sate introduces on behalf of the represented Member State the basic visa data directly into the VIS. This is the best guarantee for ensuring data security and data protection, in particular as

regards the transmission of biometric data.

Amendment 16
ARTICLE 1, POINT 1 A (new)
Point III, point -1 (new) (CCI)

	(1a) In Point III, point -1 shall be added:
	Conduct of staff processing visa applications
	Member States' diplomatic missions and consular posts shall ensure that applicants are received courteously.
	Consular staff shall, in the performance of their duties, fully respect the human dignity and integrity of the applicant. Any measures taken shall be proportionate to the objectives pursued.
	While performing their tasks, consular staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Justification

The provision is copied from the Commission's Visa Code proposal (COM(2006)403) and slightly modified. Since the present text will probably enter into force before the new Visa Code enters into force it is important to incorporate in the present text those provisions judged indispensable for the functioning of the VIS. A general clause on the conduct of staff seems essential in particular because of the taking of biometric data as a new element in the visa issuing process.

Amendment 17
ARTICLE 1, POINT 2
Point III, point 1 (CCI)

(2) In Point III, point 1 ***is replaced by the following***:	(2) In Point III, point 1 ***the following paragraphs shall be added***:
1.1 Visa application forms-number of application forms	
Aliens shall also be required to fill in the uniform visa form. Applications for a uniform visa must be made using the harmonised form a specimen of which is	

given in Annex 16.	
At least one copy of the application form must be filled in so that it may be used during consultation with the central authorities. The Contracting Parties may, insofar as national administrative procedures so require, request several copies of the application.	

Justification

Since there is no modification proposed to this part of the current CCI it does not need to be reproduced here.

Amendment 18
ARTICLE 1, POINT 2
Point III, point 1.2., point (a) (CCI)

a) Member States shall collect biometric identifiers comprising the facial image and ten fingerprints from the applicant ***in accordance with the safeguards*** 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.	a) Member States shall collect biometric identifiers comprising the facial image and ten fingerprints 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.
At the moment of submission of his/her first visa application each applicant shall be required to appear in person. At that time the following biometric identifiers shall be collected:	At the moment of submission of his/her first visa application each applicant ***not subject to any of the exceptions referred to in b)*** shall be required to appear in person. At that time the following biometric identifiers shall be collected:
– a photograph, scanned or taken at the time of application and	– a photograph, scanned or taken at the time of application and
– ten fingerprints taken flat and digitally captured.	– ten fingerprints taken flat and digitally captured.
For any subsequent application the biometric identifiers shall be copied from the first application, ***providing the last entry is not older than 48 months.*** After this period a subsequent application is to be considered as a "first application".	For any subsequent application, ***within 59 months,*** the biometric identifiers shall be copied from the first application. After this period a subsequent application is to be considered as a "first application".
The technical requirements for the photograph and the fingerprints shall be in	The technical requirements for the photograph and the fingerprints shall be in

accordance with the international standards as set out in ICAO document 9303 part 1 (passports) 6th edition.	accordance with the international standards as set out in ICAO document 9303 part 1 (passports) 6th edition.
The biometric identifiers shall be taken by qualified and duly authorised staff of the diplomatic mission or consular post or, under their supervision, of the external service provider referred to in point 1.B.	The biometric identifiers shall be taken by qualified and duly authorised staff of the diplomatic mission or consular post or, under their supervision ***and responsibility***, of the external service provider referred to in point 1.B.
The data shall be entered in the Visa Information System (VIS) only by duly authorised consular staff ***according*** to ***Articles*** 4(1), Article 5 ***and Article 6(5) and (6)*** of the VIS regulation.	The data shall be entered in the Visa Information System (VIS) only by duly authorised consular staff ***referred*** to ***in Article*** 4(1), ***in accordance with*** Article 5 of the VIS regulation.
	Member States shall ensure that full use is made of all search criteria under Article 13 of the VIS Regulation in order to avoid false rejections and identifications.
	The collection of biometric identifiers, including their transmission to and from the service provider, shall be supervised in accordance with Articles 34 and 35a of the VIS Regulation relating to the supervisory activities of national and European data protection supervisory authorities as well as Article 28 of Directive 1995/46.

Justification

Although neither the European Convention for the Protection of Human Rights and Fundamental Freedoms nor the United Nations Convention on the Rights of the Child lay down safeguards for the collection of biometrics, they include important human rights which should be respected in the context of this proposal.

It should be made explicit that not every single applicant needs to appear in person at a consulate, but that exceptions are foreseen.

The reference to "the last entry" is misleading and therefore the text has been clarified. For the extension of the period regarding the frequency of collection of biometric data, see justification to amendment on recital 11.

The taking of biometrics by external service providers should meet various conditions and an important one is that the final responsibility lies with the consular missions or diplomatic posts.

Article 5 of the VIS Regulation as the general article dealing with the procedures for entering

data on the application is sufficient and therefore the references to the other articles should be deleted.

It is important as a fallback procedure to make clear that visa authorities should use all search keys foreseen in article 13 of the VIS regulation.

To ensure consistency with the specific rules on data protection as laid down in the VIS Regulation a cross-reference to them seems necessary (see opinion of the Art. 29 Working Party, p.9).

Amendment 19
ARTICLE 1, POINT 2
Point III, point 1.2., point (b) (CCI)

b) Exceptions	b) Exceptions
The following applicants shall be exempt from the requirement to give fingerprints:	The following applicants shall be exempt from the requirement to give fingerprints:
– Children under the age of ***6***;	– Children under the age of ***14***;
	– Persons over the age of 79;
– Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.	– Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken. ***Member States shall ensure that appropriate procedures guaranteeing the dignity of the person concerned are in place in the event that there are difficulties to enrol. They shall also ensure that the decision as to whether fingerprinting is impossible is always taken by duly authorised staff of the diplomatic mission or consular point of the Member State(s). The fact that fingerprinting is physically impossible shall not influence the grant or refusal of a visa.***
A Member State may provide for exceptions from the requirement of collecting biometric identifiers for holders of diplomatic passports, service/official passports and special passports.	A Member State may provide for exceptions from the requirement of collecting biometric identifiers for holders of diplomatic passports, service/official passports and special passports.
In each of these cases an entry “not applicable” shall be introduced in the VIS.	In each of these cases an entry “not applicable” shall be introduced in the VIS.
	Without prejudice to the provisions of part III.4 of the CCI, for persons under the

age of 14 and over 79, scanned photographs shall be used which do not require them to appear in person.

The exemption from the requirement to provide fingerprints for children and old persons, and in particular the age range for the taking of fingerprints, shall be reviewed three years after the start of operation of the VIS. To this end the Commission shall present a report which shall in particular cover the experience of the VIS with regard to the taking and use of fingerprints from children from 14 years old and a detailed technical assessment of the reliability of taking and using fingerprints of children below this age for identification and verification purposes in a large-scale database like the VIS. The report should also make a similar assessment as regards the taking of fingerprints from persons over the age of 79, and shall incorporate an extended impact assessment of lower and higher age limits for requiring fingerprints, including social, ergonomic and financial aspects. The report shall be accompanied where necessary by suitable proposals to amend this Regulation.

Justification

The rapporteur proposes to fix the age limits between 14 and 79 but to have a review clause.

There are various arguments to postpone the obligation for giving fingerprints of children below14 years:

There are no large-scale experiments with the use of fingerprints of children younger than 14, which is the age limit currently applied for Eurodac and US-Visit. This proposal was not accompanied by any in-depth technical analysis concerning the use of fingerprints of children in the absence of an impact assessment. It seems too risky to take fingerprints of young children from the start in such a completely new and large-scale database, with the possibility of error which would discredit the entire system. A more prudent approach is to start less ambitiously and to make an evaluation before taking further steps.

The compromise in the VIS Regulation provides for a transition period of up to three years before a check of fingerprints at the border becomes mandatory, so this is a reasonable model for a transitional approach also on ages for fingerprinting.

The rapporteur believes that persons over 79 are very unlikely to be an immigration or

terrorism risk. It seems disproportionate to burden them with the obligation to travel to a consulate and possibly queue several times outside. Without the obligation to provide fingerprints they could use traditional methods like a travel agency. In addition the accuracy of fingerprints decreases as people grow older, so they might encounter unjustified problems at the consulate or at the border. It is also much more difficult for old people to give fingerprints if they are trembling or do not understand the technology. The rapporteur would not want to give the image to the outside world of not respecting older people.

The amendment establishes fallback procedures, as recommended by the EDPS (p. 6 of his opinion) and the Art. 29 Working Party (p. 7 of their opinion) and to address the case in which an external service provider would need to make an assessment as to whether fingerprints are usable. Since there is a degree of discretion the final decision should be taken by a public official and not an employee of a private company. It could be feared that an inability to enrol could more easily lead to the refusal of a visa. Therefore, as recommended by the EDPS (p.6 of his opinion), a provision should be added to avoid such situations.

In order to avoid that children and persons over 79 exempted from provision of fingerprints are nonetheless obliged to appear in person at a consulate only for the taking of a picture, scanned photographs should be used. This is, however, without prejudice to part III.4 of the CCI which provides for a personal interview with the applicant if justified for other reasons.

The rapporteur proposes to review the age limits laid down in this Regulation three years after the start of operation of the VIS. Lower age limits could then be decided upon if clear evidence demonstrates necessity and proportionality.

Amendment 20
ARTICLE 1, POINT 3
Point VII, point 1 A, paragraph 2 (CCI)

For each location Member States shall either equip their consular office with the required material for capturing/collecting biometric identifiers or without prejudice to the above mentioned options of representation, decide to cooperate with one or more other Member States. Any cooperation shall take the form of co-location or the establishment of a Common Application Centre ***or*** co-operation with external service providers.	For each location Member States shall either equip their consular office with the required material for capturing/collecting biometric identifiers or without prejudice to the above mentioned options of representation, decide to cooperate with one or more other Member States. Any cooperation shall take the form of co-location or the establishment of a Common Application Centre. ***Member States may cooperate with an external service provider only as a last resort***.

Justification

Given that the issuing of visas including the taking of biometrics must remain essentially a public task outsourcing should only be used as a last resort.

Amendment 21
ARTICLE 1, POINT 3
Point VII, point 1 A, paragraph 2, point (a) (CCI)

a) Where "co-location" is chosen, staff from the diplomatic posts and consular missions of one or more Member States process the applications (including biometric identifiers) addressed to them at the diplomatic post and consular mission of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration and conditions for the termination of the co-location as well as the part of the administrative fee to be received by the Member State whose diplomatic post or consular mission is being used.	a) Where "co-location" is chosen, staff from the diplomatic posts and consular missions of one or more Member States process the applications (including biometric identifiers) addressed to them at the diplomatic post and consular mission of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration and conditions for the termination of the co-location as well as the part of the administrative fee to be received by the Member State whose diplomatic post or consular mission is being used. ***Applicants shall be directed to the Member State responsible for the processing of the visa application.***

Justification

For co-location as well as Common Application Centres, third-country nationals should be directed to the 'correct' consulate officials.

Amendment 22
ARTICLE 1, POINT 3
Point VII, point 1 A, paragraph 2, point (a) (CCI)

b) Where "Common Application *Centres":* are established, staff of diplomatic posts and consular missions of two or more Member States are pooled in one building in order to receive the visa applications (including biometric identifiers) addressed to them. Applicants shall be directed to the Member State responsible for the processing of the visa application. Member States shall agree on the duration and conditions for the termination of this co-operation as well as the cost sharing among the participating Member States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.	b) Where "Common Application *Centres"* are established, staff of diplomatic posts and consular missions of two or more Member States are pooled in ***the building of*** one ***Member State enjoying diplomatic or consular protection under international law or in a European Commission building recognised by the host state as inviolable*** in order to receive the visa applications (including biometric identifiers) addressed to them. Applicants shall be directed to the Member State responsible for the processing of the visa application. Member States shall agree on the duration and conditions for the termination of this co-operation as well as the cost sharing among the participating

	Member States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.

Justification

Given in particular the risks for data security and data protection linked to the taking of biometrics, several amendments have been tabled to ensure that any activity linked to the issuing of visas takes place in a building enjoying diplomatic or consular protection. This is the case both for Common Application Centres and external service providers. This was also strongly recommended by both the EDPS (see p. 7 of his opinion) and by the Art. 29 Working Party (see p. 10 of their opinion). It is important that these are Member States' buildings or delegations of the Commission, in order to ensure that Directive 95/46 and Regulation 45/2001 are applicable and that any material is protected, e.g. from seizure.

Amendment 23
ARTICLE 1, POINT 3
Point VII, point 1 B (CCI)

Where for reasons relating to the local situation of the consular post ***it is not appropriate*** to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre**.** a Member State or several Member States jointly may co-operate with an external service provider for the reception of visa applications (including biometric identifiers). In such a case, the Member State(s) concerned shall remain liable for compliance with data protection rules for the processing of visa applications.	***If, due to exceptional circumstances, such as the reception of a very high number of visa applications or particular*** reasons relating to the local situation of the consular post***, it is not possible or not appropriate*** to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre a Member State or several Member States jointly may co-operate with an external service provider for the reception of visa applications (including biometric identifiers). In such a case, the Member State(s) concerned shall remain liable for compliance with data protection rules for the processing of visa applications. ***The Member State(s) shall ensure that an external service provider under 1.B.1b undertakes its activities on the premises of a Member State which enjoys diplomatic or consular protection under international law or on European Commission premises recognised by the host state as inviolable and that qualified and duly authorised staff of the diplomatic mission or consular post of the Member State(s) are present to closely***

	supervise the activities of the external service providers.

Justification

The rapporteur proposes that in the case of outsourcing consular officials are present to supervise the service provider, as is strongly recommended by the Article 29 Working Party (p. 10 of their opinion). Their presence safeguards the public nature of the visa issuing process. Given the fact that outsourcing already considerably reduces the workload for consulates this obligation should not be seen as an additional burden for Member States.

Amendment 24
ARTICLE 1, POINT 3
Point VII, point 1.B.1 point (b) (CCI)

b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12) ***and*** transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application.	b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12), transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application ***and hands back the passport to the applicant***.

Amendment 25
ARTICLE 1, POINT 3
Point VII, point 1.B.2 (CCI)

1.B.2 - Obligations of Member States	1.B.2 - Obligations of Member States
The Member State(s) concerned shall select an external service provider ***who*** is able to ensure all the technical and organisational security measures ***and appropriate technical and organizational measures requested by the Member State(s)*** to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the	The Member State(s) concerned shall select an external service provider ***which*** is able to ensure ***a high quality of service and*** all the technical and organisational security measures ***necessary*** to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the reception and transmission of files and data to the

reception and transmission of files and data to the consular post, and against all other unlawful forms of processing.

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts and shall ensure there is no conflict of interests.

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts.

The Member State(s) concerned shall conclude a contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall ***within local consular cooperation inform*** the diplomatic missions and consular posts of other Member States and the Commission delegation ***why the contract is necessary***.

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

a) define the exact responsibilities of the service provider;

b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;

c) require the service provider to provide the applicants with the information required under Regulation ……. [draft VIS

consular post, and against all other unlawful forms of processing.

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts) and shall ensure there is no conflict of interests.

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts ***solely for the purposes laid down in the VIS Regulation***.

The Member State(s) concerned shall conclude a contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall ***justify, with reasons, the need for the contract to*** the diplomatic missions and consular posts of other Member States and the Commission delegation ***within local consular cooperation***.

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

a) define the exact responsibilities of the service provider;

b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;

c) require the service provider to provide the applicants with the information required under ***Article 30 of*** Regulation

regulation];	……. [draft VIS regulation];
	ca) require the service provider to ensure that its staff are appropriately trained and respects the rules laid down in Article 1 (1 a new);
	cb) require the service provider to adopt appropriate anti-corruption measures;
d) provide for access by consular staff to the premises of the service provider at all times;	d) provide for access by consular staff to the premises of the service provider at all times;
e) require the service provider to observe rules of confidentiality ***(including the protection of the data collected in relation to visa applications;***	e) require the service provider ***and its staff*** to observe rules of confidentiality ***which shall also apply once the staff have left the employ of the external service provider or after the suspension or termination of the contract***;
	ea) ensure data protection compliance, including reporting obligations, external audits, regular spot checks by, inter alia, national data protection authorities and that mechanisms are in place for the apportionment of liability of a contractor in the event of a breach of the regulations on privacy, including the obligation to compensate individuals where they have suffered damage resulting from an act or omission of the service provider;
	eb) require the service provider not to copy, store, or otherwise keep any data collected after the transmission of the completed file to the diplomatic mission or consular post of the Member State responsible for the processing of the application;
	ec) require the service provider to prevent any unauthorised reading, copying, modification or deletion of visa data during the transmission from the service provider to the diplomatic mission or consular post of the Member State responsible for the processing of the application, in particular by means of appropriate encryption techniques.
f) contain a suspension and termination clause.	f) contain a suspension and termination clause.

	A model contract shall be established within local consular cooperation.
	Member States shall ensure that there is no disruption of service for visa applicants in the event of the external service provider suddenly ceasing to provide the services required under the contract.
The Member State(s) concerned shall monitor implementation of the contract, including:	The Member State(s) concerned shall ***closely*** monitor ***the*** implementation of the contract, including:
a) the general information provided by the service provider to visa applicants;	a) the general information provided by the service provider to visa applicants;
b) the technical and organisational security measures and appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing as well as the reception and transmission of files and data to the consular post;	b) the technical and organisational security measures and appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing as well as the reception and transmission of files and data to the ***diplomatic mission*** or consular post;
c) the capturing of biometric identifiers;	c) the capturing ***and transmission*** of biometric identifiers;
d) the measures taken to ensure compliance with data protection provisions.	d) the measures taken to ensure compliance with data protection ***and data security*** provisions ***as well as against corruption.***
The total amount of fees charged by the external service provider for processing the visa application shall not exceed the fee set out in annex 12.	The total amount of fees charged by the external service provider for processing the visa application shall not exceed the fee set out in annex 12.
	Member States shall ensure that a procedure is in place allowing for the identification of the external service provider involved in any specific visa application.
The consular staff of the Member State(s) concerned shall give training to the service provider, corresponding to the knowledge needed to offer appropriate service and sufficient information to visa applicants.	The consular staff of the Member State(s) concerned shall give training to the service provider, corresponding to the knowledge needed to offer appropriate service and sufficient information to visa applicants.

Justification

A provision on the quality of service is added since visa applicants should receive a high-quality service. An external service provider will in many cases be the first image of the EU encountered by applicants and should therefore also fulfil certain quality standards. The deletion clarifies the text.

To avoid any misunderstanding, it should be explicitly stated that access to the VIS can take place only for the purposes mentioned in the VIS Regulation.

The Member States should justify why outsourcing is necessary.

A series of clauses have been added regarding the scope of contracts with external service providers. The specifications enumerated in point (ea) are proposed by the EDPS (p. 7 of his opinion) and those mentioned in point (eb) are proposed by the Art. 29 Working Party (p. 10 of their opinion). Member States may add further requirements if they deem them necessary. It is important that a model contract is established by Member States in order to harmonise to the extent possible Member Sates' practices, and facilitate cooperation.

It is essential that the implementation of the contract with external service providers is closely monitored including on matters such as transmission of biometric identifiers to the responsible Member State and measures taken to ensure data security and prevent corruption.

As suggested also by the Art. 29 Working Party (p. 10 of their opinion), it is important that all external service providers can be identified for reasons of transparency and accountability.

Amendment 26
ARTICLE 1, POINT 3
Point VII, point 1.B.5 (CCI)

1.B.5 - Information	1.B.5 - Information
Precise information on the means of obtaining an appointment and submitting a visa application shall be displayed by Member States' diplomatic missions and consular posts for the general public.	***Member States and their diplomatic missions or consular posts shall provide the general public with all relevant information in relation to a visa application :***
	(a) the criteria, conditions and procedures for applying for a visa;
	(b) the means of obtaining an appointment, if applicable;
	(c) where the application should be submitted (competent diplomatic mission or consular post, common application centre or external service provider).

Justification

This is copied from Article 41(1) of the Visa Code proposal which is much better than the present text. Since the present text will probably enter into force before the new Visa Code enters into force, it is important to incorporate in the present text those provisions judged indispensable for the functioning of the VIS.

Amendment 27
ARTICLE 1, POINT 3
Point VII, point 1.B.6 (new) (CCI)

1.B.6 - Information Campaign

Shortly before the VIS is brought into operation in a third country the diplomatic mission or consular post of Member States together with the delegation of the Commission, shall launch a campaign informing the general public about the objectives pursued, the data stored in and the authorities having access to the VIS, and the rights of visa applicants. Such campaigns shall be conducted regularly.

Justification

Given the important changes the establishment of the VIS will bring to the current visa procedure and the implications for the visa applicant, it is important that an information campaign is made to inform the general public about the new system in place.

Amendment 28
ARTICLE 1, POINT 3
Point VII, point 1.D, paragraph 1 (CCI)

Member States shall inform the Commission of how they intend to organise the reception and processing of visa applications in each consular location. The Commission will ensure appropriate publication.	Member States shall inform the Commission of how they intend to organise the reception and processing of visa applications in each consular location. The Commission will ensure appropriate publication ***in the Official Journal***.

Justification

Publication in the Official Journal is important for reasons of transparency.

Amendment 29
ARTICLE 1, POINT 3
Point VII, point 1.E (new) (CCI)

1.E General responsibilities

1.E.1 Documents

Any document, data or biometric identifier received by, or on behalf of, a Member State in the course of a visa application shall be considered a 'consular document' under the Vienna Convention on consular cooperation and shall be treated in an appropriate manner.

1.E.2 Training

Before being authorised to take biometric identifiers, the staff of the diplomatic mission or consular point shall receive appropriate training so as to ensure smooth and professional enrolment.

1.E.3 Appeal

Applicants who have been refused a visa shall have the right to appeal. Appeals shall be conducted in accordance with the national law of the Member State responsible. Applicants shall be given a written indication of contact points able to provide information on representatives competent to act on their behalf in accordance with the national law of the Member State responsible.

1.E.4 Liability

Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with this Regulation shall be entitled to compensation from the Member State which is liable for the damage suffered. That State shall be exempted from liability, in whole or in part, if it proves that it did not cause the damage.

Claims for compensation against a Member State for the damage referred to in the previous subparagraph shall be governed by the provisions of national law

	of the defendant Member State.
	1.E.5 Penalties
	Member States shall take the necessary measures to ensure that any breach of this Regulation, in particular any misuse of data submitted for a visa application is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Justification

A new part is added with general responsibilities for Member States which seem indispensable for the functioning of the VIS. A provision on the status of documents, data and biometric identifiers is important in order to ensure that they will benefit from consular protection. A provision on training is necessary given the specific expertise the enrolment of biometrics requires. As this Regulation will probably enter into force before the Visa Code the provisions on appeal are included here. Rules on liability and penalties are necessary in view of potential damage resulting from acts violating this Regulation.

Amendment 30
ARTICLE 2

The Commission shall present a report to the European Parliament and to the Council on the implementation of the present regulation ***two years after its entry into force***.	The Commission shall present ***two years after the entry into force of this regulation and every two years thereafter*** a report to the European Parliament and to the Council on the implementation of the present regulation ***including the implementation of the enrolment of biometric identifiers, the appropriateness of the ICAO standard chosen including in terms of data protection, experiences with external service providers, including any problems encountered, the principle of the "first application" and the organisation of the reception and the processing of visa applications***. ***The report shall be accompanied, where necessary, by appropriate proposals to modify this Regulation.***

Justification

See justification for amendment on recital 14.

EXPLANATORY STATEMENT

I. Introduction

The present proposal is the 4th element of the VIS package. In modifying the existing Common Consular Instructions[1] it provides, firstly, for the obligation to give biometrics to be stored in the VIS and the standards for doing so. Secondly, it includes provisions on the organisation of the reception of visa applications.

Although a complete revision of the visa rules is foreseen with the Visa Code[2] the Commission has made this specific proposal separately. The underlying rationale of this approach is that the adoption of the Visa Code is likely to take longer than the present proposal of which the adoption could allow the VIS to start operating.[3] The rapporteur stresses the importance of ensuring coherence between the two proposals.

An introduction into the subject areas covered by the present proposal was given by the rapporteur in two simultaneous working documents.[4] Those documents identified the politically sensitive questions and were the basis for several discussions.

For the preparation of this draft report the rapporteur also took into consideration the very helpful opinions presented by the European Data Protection Supervisor[5] and the Article 29 Working Party.[6]

II. Biometrics

II.1 Fingerprints

The rapporteur proposes to initially exempt persons below the age of 14 and over 79 from the obligation to provide fingerprints, with a review of these age limits after three years following a detailed study.

The choice of these age limits have to be essentially a policy choice at this stage rather than one based on technical guidance, for the simple reason that objective, independent advice is lacking. There was no impact assessment accompanying the proposal from the Commission, which considering its promises and commitments on better regulation is deeply regrettable and pretty shocking. The Commission seems just to have put forward a proposal largely reflecting discussions which took place with the Member States in the Council. In addition, there exists no large-scale experience of fingerprinting children under 14 or elderly persons.

Thus in the absence of credible technical guidance the rapporteur believes that it is wise in the initial stage to adopt age limits which we are sure will be workable, thereby avoiding

[1] Consolidated version in OJ C 326 of 22.12.2005, p.1 - 149
[2] COM(2006)403; Report Lax
[3] Technically it will be inserted in the visa code once this is agreed like was the case for the stamping of documents (Reg. 2133/2004) which was introduced in the Schengen Borders Code (Reg. 562/2006).
[4] PE 386.565v01-00, 386.717v01-00 presented in LIBE on 10.4. and 8.5.2007.
[5] Opinion of 27.10.2006, OJ C 321 of 29.12.2006, p. 38
[6] Opinion 3/2007 of 1.3.2007 (WP 134)

unnecessary risks of turning the VIS project into a big experiment. Since the only currently comparable large-scale applications of fingerprints are Eurodac (minimum age 14 years) and US-Visit (14 to 79 years) those age limits should also be used for an initial period for the VIS.

But even if there was proven technology to fingerprint children of a very low age one should think twice and ask about how appropriate, necessary and proportionate that would be. Such a full analysis cannot be done here, although the rapporteur believes that at least the following points would deserve further reflection.

Firstly, it has to be considered whether the taking of fingerprints of children below the age of 14 is necessary to achieve the objectives of the VIS as laid down in Article 1a of the agreed text. For the first objective, facilitating the visa application procedure, fingerprints of young children are not necessary. On the contrary, this would complicate the application for a visa through the child having to come to the consulate to provide their fingerprints. Since the fingerprints of children are subject to change, we could see the absurd situation where fingerprints of children would have to be taken for example every two years while those of the parents were taken every four or five years.

For the second VIS objective, the prevention of visa shopping, younger age limits are also unnecessary since usually young children travel with their parents with whose application files their own are linked according to Article 5(4) of the VIS Regulation.

For the third objective, the facilitation of the fight against fraud, it is generally considered that biometrics could make visas more difficult to forge. There is, however, no information available whether there is a problem of forged visas of children.

In case of the fourth objective - the facilitation of border control - biometrics would allow a check at the border as to whether the person present is the same person to whom the visa was issued. Though it is not an explicit VIS objective, this could in theory be relevant to the fight against child trafficking through a check on whether the child at the border it is the same child as the one at the consulate with the parents. But the question of whether the 'family' presenting itself at the consulate is indeed a family is outside the realm of the CCI and the VIS. There is indeed a risk that reliance on VIS certainty would actually mean a reduction in the likelihood of border questioning over whether a group constitutes a family.

It is also important to recall that the VIS Regulation provides for a transitional period of three years after the start of VIS operations during which Member States do not have to check fingerprints at the border (Art. 16(1a)). The rapporteur considers it disproportionate to require fingerprints from young children while they are not systematically checked at the border. She believes that that this three year period should be used for an extended study on age limits for fingerprints so that at the end of the period any decision to change age limits could be made on a better-informed basis.

For the fifth VIS objective, to assist in the identification of undocumented persons, fingerprints of young children are equally unnecessary since they are not of adequate quality to use for identification as the Commission acknowledges.[1]

[1] "The fingerprints of children aged 6-12 years are useful only for a one-to-one comparison." (p.9 of the proposal)

For the sixth objective, facilitating the application of the Dublin II Regulation[1], taking fingerprints of children below 14 seems in contradiction with the minimum age in the Eurodac Regulation and the present text could not change that limit.[2]

Finally, it is also doubtful whether the fingerprints of children below 14 would contribute to the prevention of threats to internal security. While it is imaginable in very rare cases that children are involved in terrorist acts or other serious crimes there are doubts as to whether this would justify taking fingerprints of so many children.

The rapporteur believes that an upper age limit of 79 as in US-Visit is equally important. Persons over 79 are very unlikely to be an immigration or terrorism risk. It seems disproportionate to burden them with the obligation to travel to a consulate and possibly queue several times outside. Without the obligation to provide fingerprints they could use traditional methods like a travel agency. In addition, the accuracy of fingerprints decrease as people grow older. This means that they might encounter unjustified problems at the consulate or at the border. It is also much more difficult for old people to give fingerprints if they are hesitant or do not understand the technology. The rapporteur would not want the EU to give the image to the outside world of failing to respect older people.

II.2 Photographs

The Commission does not propose any age exemption for photographs and the rapporteur agrees with this. The Commission leaves open the question of whether scanned photographs are used or photographs taken at the consulate. The rapporteur is of the opinion that for persons exempted from fingerprinting, as a rule scanned photographs should be used to avoid them having to come to the consulate just for the taking of a photograph.

II.3 Frequency of collection

The Commission proposes to require the applicant to appear in person for enrolment for the first application and to copy that data for any subsequent application within a period of 48 months. The rapporteur proposes to extend this period to 59 months which still guarantees that the data is available in the VIS in conformity with its retention period of 5 years. This prolongation of the period does not affect the security of the visa process and increases its user-friendliness. The rapporteur also proposes an amendment clarifying that after 59 months new biometric data must be taken, since the Commission proposal seemed to imply that if a person regularly applies for a visa (within the period of 48 months) the same biometric data could be used for a lifetime. Lastly, the rapporteur would like to point out that the choice of 14 as the age limit for fingerprints is linked to the frequency of collection. If the age limit was lowered, than the fingerprints of children would have to be taken more often since they constantly change.

III. Reception of visa applications

III.1 Outsourcing

[1] Reg. 343/2003; see Art. 1a(f) of the VIS Reg.
[2] Briefing Paper "Biometrics and Visa Applications" by Steve Peers, p.5

The rapporteur agrees with the general concept of outsourcing in so far as it improves the service for visa applicants and as long as it takes place under conditions which ensure the integrity of the visa issuing process. These essential conditions are that outsourcing is indeed only used as a last resort that the service provider operates in a building under diplomatic protection, that consular officials are present to closely supervise the staff of the service provider and that the contractual clauses providing for the oversight of the contractor are reinforced.

III.2 Common Application Centres (CACs)

As in the cases of outsourcing the rapporteur is of the opinion that CACs should only be established in a building enjoying diplomatic protection.