

**12647/04**

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**Interinstitutional File:  
2004/0039 (CNS)**

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**LIMITE**

**VISA 165  
COMIX 568**

**NOTE**

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from : Presidency  
to : Visa Working Party

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Subject : Draft Council Regulation on standards for security features and biometrics in  
passports and travel documents issued by Member States  
Meeting with the Chairman of the Art. 29 WP on data protection

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**1. Introduction**

At the meeting of the Visa Working Party on 2 September 2004 there was general support of the suggestions made by the "Article 29 – Data Protection Working Party" (Art.29 WP). Some delegations, however, indicated that certain aspects of these suggestions had to be clarified. Therefore, the Presidency on 21 September met with Mr. Schaar, chairman of the Art. 29 WP. Representatives of the Commission and the CSG also attended the meeting. Below delegations will find a short summary of Mr. Schaar's general remarks on the draft Regulation followed by the Presidency's suggestion for amending the text. The Presidency's alternative suggestion will serve as the basis for discussions in the Visa Working Party on 28 September.

## 2. Summary of the meeting with the Art. 29 WP

Mr Schaar emphasised three main aspects of the opinion of the Art. 29 WP:

1. fundamental objection of the Art. 29 WP to the establishment of a centralised data base: the sole purpose of the draft Regulation should be verification of the identity of the holder of the travel document which ought to be dealt with by storing biometric data in the travel document itself;
2. the need to establish a secure technical environment in order to avoid that data could be read by unauthorized authorities;
3. creation of proper legal requirements: the purpose of the draft Regulation has to be clearly defined. EU citizens should be able to verify whether central authorities are allowed to read data from the perspective of national law.

Mr. Schaar also mentioned the need to secure personal data in addition to the biometric data in the contactless chip. The confidentiality of the data ought to be guaranteed by blocking unauthorised access to data.

The Art. 29 WP had suggested the additional text of Art. 2 (2)<sup>1</sup> in order to define the categories of authorised authorities entitled to process data. These categories should be set out in national law.

Mr. Schaar referred to a register of competent authorities, which should be accessible through public information channels, e.g. Internet (Art. 3 (3)).

Finally, he made clear that the use of information as referred to in Art. 4 (3) should be strictly limited to the purpose of the Regulation, which is verification/identification of the holder of the document.

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<sup>1</sup> All references to articles are based on 11489/1/04 VISA 140 COMIX 474 REV 1.

### **3. Proposals by the Presidency to adjust the text suggestions of the Art. 29 WP**

Based on the observations by delegations in the Visa Working Party meeting on 2 September, remarks from the Council Legal Service and the outcome of the discussions with the Art. 29 WP, the Presidency has drafted the following amendments to the text suggested by the Art. 29 WP:

#### *Article 1*

##### **Text suggested by Art. 29 WP**

2. The passport and travel documents shall include a storage medium with sufficient capacity, [and the capability to guarantee the integrity, the authenticity and the confidentiality of the data] It shall contain a facial image. Member States may also include fingerprints in interoperable formats.

##### **Adjustment proposed by the Presidency**

- "2. *The passport and travel documents shall include a storage medium which shall contain a facial image. The Member States may also include fingerprints in interoperable formats. The data must be highly secured and the storage medium shall have sufficient capacity and capability to guarantee the integrity and the authenticity of the data.*"

*Article 2*

**Text suggested by the Art. 29 WP**

2. The storage medium may only be used
  - a) by the competent authorities of the Member States for reading, storing, modifying and erasing data and
  - b) by authorised bodies entitled to read the data. The technical specifications have to guarantee that no other use of or access to the data contained in the storage medium may take place.

**Adjustment proposed by the Presidency**

2. *The storage medium may only be used*
  - a) *by the authorised authorities of the Member States for reading, storing, modifying and erasing data and*
  - b) *by authorised authorities entitled to read the data for the purpose of this Regulation. The technical specifications have to guarantee that no other use of or access to the data contained in the storage medium may take place.*

### *Article 3*

#### **Text suggested by the Art. 29 WP**

3. Each Member State shall set up a register of competent authorities for processing data as referred to in Article 2(2).

#### **Adjustment proposed by the Presidency**

3. *Each Member State shall set up a register of the authorities mentioned in Article 2(2).*

### *Article 4*

#### **Text suggested by the Art. 29 WP**

3. The biometric features in passports and travel documents 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 passport or other travel documents are required to be produced by law.

#### **Adjustment proposed by the Presidency**

3. *For the purpose of this Regulation the biometric features in passports and travel documents shall only be used for verifying:*
  - a) the authenticity of the document, and*
  - b) the identity of the holder when the passport or other travel documents are required to be produced by law.*