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*Committee on Civil Liberties, Justice and Home Affairs*

PROVISIONAL  
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30.9.2004

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## **DRAFT REPORT**

on the proposal for a Council Regulation on standards for security features and biometrics in EU citizens' passports  
(COM(2004)0116 – C6-0101/2004 – 2004/0039(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

### ***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 Council Regulation on standards for security features and biometrics in EU citizens' passports  
(COM(2004)0116 – C6-0101/2004 – 2004/0039(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2004)0116)<sup>1</sup>,
  - having regard to Article 62, paragraph 2 a) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0101/2004),
  - having regard to the Protocol integrating the Schengen acquis into the framework of the European Union, pursuant to which the Council consulted Parliament,
  - 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 (A6-0000/2004),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
  5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  6. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1  
Recital 2 a (new)

***The biometric data in passports should be***

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<sup>1</sup> OJ C 98, 23.4.2004, p. 39.

*used only for verifying the authenticity of the document as well as the identity of the holder by means of directly available comparable features when the passport is required to be produced by law.*

*Justification*

*Since the reason for incorporating biometric features into passport documents has to be explicit, appropriate, proportionate and clear, it needs to be incorporated into the legal text.*

Amendment 2  
Recital 3

(3) The harmonisation of security features and the integration of biometric identifiers is an important step towards the use of new elements in the perspective of future developments at European level, 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. ***The specifications set out in the document No 9303 on machine readable travel documents from the International Civil Aviation Organisation should be taken into account.***

(3) The harmonisation of security features and the integration of biometric identifiers is an important step towards the use of new elements in the perspective of future developments at European level, 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.

*Justification*

*Document No 9303 should not be referred to in an EU regulation, since it is constantly being amended by means of a process which lacks transparency and democratic legitimacy.*

Amendment 3  
Article 1, paragraph 2

2. The passport shall include a storage medium with sufficient capacity, ***which shall be highly secured and*** shall contain a

2. The passport shall include a ***highly secure*** storage medium with sufficient capacity ***and the capability to guarantee***

facial image. The Member States may also include fingerprints in interoperable formats.

***the integrity, authenticity and confidentiality of the data. It shall contain a facial image. The Member States may also include fingerprints in interoperable formats. No central database of European passports and travel documents containing all EU passports holders' biometric and other data shall be set up.***

#### *Justification*

*The technical specifications are crucial to privacy. Certain criteria with which they have to comply should therefore be specifically mentioned.*

*The setting up of a centralised database would violate the purpose and the principle of proportionality. It would also increase the risk of abuse and function creep. Finally, it would increase the risk of using biometric identifiers as 'access keys' to various databases, thereby interconnecting data sets.*

#### Amendment 4

##### Article 2, paragraph 1, introductory part

1. Additional technical specifications for the passport relating to the following shall be established in accordance with the procedure referred to in Article 5 (2):

1. Additional technical specifications for the passport relating to the following shall be established in accordance with the procedure referred to in Article 5:

#### *Justification*

*See justification for amendment to Article 5, paragraph 3 a (new).*

#### Amendment 5

##### Article 2, paragraph 1, point b)

(b) technical specifications for the storage medium of the biometric information and its securisation;

(b) technical specifications for the storage medium of the biometric information and its securisation, ***in particular to guarantee the integrity, authenticity and confidentiality of the data as well as the use thereof in accordance with the purposes as defined in this Regulation;***

*Justification*

*See first part of justification for amendment on Article 1, paragraph 2.*

Amendment 6  
Article 2, paragraph 1 a (new)

- 1a. The storage medium may be used only***
- a) by the competent authorities of the Member States for reading, storing, modifying and erasing data and***
  - b) by authorised bodies entitled by law to read the data.***

*Justification*

*It should be clearly laid down in the legal text which authorities will have access to the data. Unauthorised access is not acceptable from a privacy point of view.*

Amendment 7  
Article 3, paragraph 2 a (new)

- 2a. Each Member State shall maintain a register of competent authorities for processing data and of authorised bodies entitled to read the data, as specified in Article 2 (1a). It shall communicate this register and, if necessary, regular updates thereof, to the Commission which shall maintain an up-to-date online register and which shall publish a compilation of all national registers every year.***

*Justification*

*In order to ensure the necessary transparency and thereby protect against abuse, it is suggested that a register of Member-State authorities which are competent to read, store, modify and erase data (i.e. passport-issuing authorities) and of authorised bodies entitled to read the data (i.e. border-patrolling authorities) be set up. This could be done in a similar way as in the case of the list of authorities having access to the Schengen Information System*



*set up pursuant to Article 101.4 of the Schengen Implementing Convention. Up-to-date information could be made available by the Commission via the Internet.*

Amendment 8  
Article 4, paragraph 2 a (new)

***2a. The biometric features in passports shall be used only for verifying***

***a) the authenticity of the document***

***b) the identity of the holder by means of directly available comparable features when the passport is required to be produced by law.***

*Justification*

*Since the reason for incorporating biometric features into passport documents has to be explicit, appropriate, proportionate and clear, it needs to be incorporated into the legal text. It has to be absolutely clear that biometrics in EU citizens' passports are going to be used only for verifying the authenticity of the document and the identity of the holder.*

Amendment 9  
Article 4, paragraph 2 b (new)

***2b. Member States shall regularly forward to the Commission audits of the application of this Regulation based on commonly agreed standards, in particular with regard to the purpose and access limitation rules. They shall also communicate all problems encountered as well as exchange good practice.***

*Justification*

*It is very important to have an effective control network in place in order to build up trust into the concept of biometrics.*

Amendment 10

Article 5, paragraph 3 a (new)

***3a. The Committee shall be assisted by experts appointed by the Working Party set up under Article 29 of Directive 95/46/EC.***

*Justification*

*The technical specifications are of the utmost importance because they will determine whether the incorporation of biometrics into passports will be useful or not and whether the data will be physically protected. Experts viewing the technical specifications from a data-protection point of view should have the possibility of participating in the work of the technical committee and thus also advising on which possible technical solutions are better from a data-protection point of view. At the end they should have the possibility of evaluating the technical specifications from a data-protection perspective.*

Amendment 11

Article 5, paragraph 3 b (new)

***3b. Once the Committee has finalised the specifications provided for in Article 2(1), the Working Party set up under Article 29 of Directive 95/46/EC shall issue an opinion on the compliance of such specifications with data-protection standards, which shall be forwarded to the European Parliament, the Council and the Commission.***

*Justification*

*See justification for amendment to Article 5, paragraph 3 a (new).*

Amendment 12

Article 5, paragraph 3 c (new)

***3c. The Commission shall forward its draft decision to the European Parliament which may, within a period of three***

***months, adopt a resolution opposing the draft decision on the technical specifications.***

*Justification*

*See justification for amendment to Article 5, paragraph 3 a (new).*

Amendment 13  
Article 5, paragraph 3 d (new)

***3d. The Commission shall inform the European Parliament of the action which it intends to take in response to the European Parliament's resolution and of its reasons for doing so.***

*Justification*

*See justification for amendment to Article 5, paragraph 3 a (new).*

Amendment 14  
Article 5, paragraph 3 e (new)

***3e. The confidentiality of the specifications shall be guaranteed.***

*Justification*

*See justification for amendment to Article 5, paragraph 3 a (new).*

## EXPLANATORY STATEMENT

### **I. The context**

Following recent terrorist attacks, various calls were made world-wide to increase document security further. The events were an impetus to speeding up work on the introduction of biometrics which was already underway in various fora.

Technical committees of the International Civil Aviation Organisation (ICAO) approved recommendations in 2003 (the ICAO "Blueprint"). For passports it recommended inter alia that facial recognition be used world-wide for machine-assisted identity confirmation and the use of a contact-less integrated circuit (chip), with a minimum capacity of 32K bytes as the storage medium. Fingerprint and/or iris were defined as possible additional identifiers.

A further driving force had been provided by various US decisions, notably concerning the visa waiver programme (VWP). The US required that not later than October 26, 2004, each country that is designated to participate in the VWP<sup>1</sup> "shall certify, as a condition for designation or continuation of that designation, that it has a program to issue to its nationals machine-readable passports that are tamper-resistant and incorporate biometric and document authentication identifiers that comply with applicable biometric and document identifying standards established by the International Civil Aviation Organisation."<sup>2</sup> Since it became evident that no country would be able to meet the deadline, President Bush signed a law<sup>3</sup> to extend it by one year.

At European level, impetus came from European Council's conclusions which urged the Commission to make proposals concerning the introduction of biometric identifiers. The Thessaloniki European Council of 19/20 June 2003 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)". This approach has been confirmed by various European Councils, such as the 16-17 October 2003 Brussels European Council: "Notes with satisfaction the work under way within the Union and in international bodies (ICAO, G8) on the introduction of biometric identifiers in visas, residence permits and passports."

### **II. The present proposal**

The present proposal aims to render passports more secure by introducing legally binding harmonised security features for EU citizens' passports and by introducing biometric identifiers into the passport. Contrary to the Commission proposals on visas and residence permits it is proposed that only one biometric identifier - the facial image - should be obligatory. Member States are given the option of including fingerprints.

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<sup>1</sup> The VWP allows the citizens of certain countries to travel to the USA without having to obtain a visa. Participating are among others the "old" EU Member States (except Greece) and Slovenia from the new Member States.

<sup>2</sup> Enhanced Border Security and Visa Entry Reform Act of 2002, Sec. 303(b)(3).

<sup>3</sup> H.R. 4417 of 9 August 2004.

Detailed technical specifications are to be decided by comitology using the regulatory procedure. According to the Commission's proposal, Member States will have to apply the regulation one year after these specifications are adopted.

In the explanatory memorandum the Commission suggests that in a long-term perspective a central European passport register could be created.

### **III. Rapporteur's view**

The rapporteur is in general in favour of the Commission proposal. He considers that in fact biometrics will help to make our documents more secure. The introduction of a biometric identifier will make it very difficult to falsify passports because the biometric will ensure that a person presenting a passport is in fact the one to whom it was originally issued. In addition, since passports are also used in everyday life and not only at the crossing of borders, biometrics provides a solution for the problem of identity theft.

At the same time he is of the opinion that as regards the legislative act, the technical specifications (containing cost-effective and secure solutions relating to the collection, processing, storage and use of biometric data) and implementation by the Member States, several requirements protecting citizens' rights have to be met before biometric passports are issued.

The use of biometrics is very sensitive from a data-protection point of view. It is without question that the rapporteur supports the suggestions for amendments as presented in a recent letter from the chairman of the Article 29 Working Party (WP).<sup>1</sup> All the necessary safeguards have to be in place in order to guarantee full compliance with the provisions of the data-protection directive<sup>2</sup>. As stated in the general working document on biometrics which has been produced by the Article 29 WP<sup>3</sup>, "personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. In addition, personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and further processed"<sup>4</sup> (purpose and proportionality principle; see Article 6 of the Directive). In transposing these two fundamental principles the rapporteur is of the opinion that the purpose of introducing biometrics needs to be stated more specifically in the legal text and that the users of this data have to be clearly identified. As regards the purpose for which the data will be used, it has to be made absolutely clear that the data can only be used for verification and under no circumstances for other purposes, in particular hidden surveillance.

The rapporteur is particularly worried about the long-term perspective of the establishment of a European register for passports issued, as referred to in the explanatory memorandum. Such a central database is not necessary for the purpose of ensuring "a more reliable link between the holder and the passport." Furthermore, the risk of "function creep" (the use of data for

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<sup>1</sup> letter of Peter Schar of 18/08/04 to the chairman of the Committee on Civil Liberties, Justice and Home Affairs, Jean-Louis Bourlanges.

<sup>2</sup> Directive 95/46/EC.

<sup>3</sup> Working document on biometrics; 01.08.2003; WP 80.

<sup>4</sup> page 6.

other purposes than originally envisaged) is too great. At the same time the rapporteur urges Member States not to store the data in national databases. The biometric data should only be stored locally in the passport.

At the same time, and as the Commission outlines in the explanatory memorandum, the use of this technology will increase the work of authorities responsible for data protection. The rapporteur calls on Member State to provide them with sufficient resources to enable them to carry out their legal mandate to the full.

It is essential that the technical solution selected at the end, after the comitology committee has elaborated the technical specifications, should be sound. It is these specifications that determine whether the idea of biometrics in passports will work or not and that ensure data will be physically protected.<sup>1</sup> Therefore the rapporteur introduces amendments to the proposal which set some additional criteria which should guide the technical implementation. There are a series of concerns regarding at least three issues: firstly, in order to protect citizens' data, appropriate protection against unauthorised access has to be in place. Some argue that a chip can in fact be read from a relatively long distance, while others argue that a chip corresponding to the ISO norm 14443 can only be read in a distance of 10-15 cm. Secondly, it needs to be ensured that the chip is well protected against accidental damage and has a "life expectancy" like today's passports (in many cases 10 years). Thirdly, it has to be guaranteed that the chip embedded in the passport does not interfere with chips embedded into visas affixed into the passport. The rapporteur would like to stress in this connection that the technical experts must have the necessary time to find the right solutions. Thanks to technological progress there are even solutions which would make the use of chips superfluous from both the security and the cost point of view. Digital recording of the photograph and of the fingerprint, together with a bar code incorporating a digital signature encrypted by means of a public-key code, is one possible solution. It would be of no help if the EU rushed into a perceived solution only to acknowledge afterwards that it was not well enough prepared, or that the solution was too expensive or technologically obsolete. Such a course of action would undermine citizens' trust.

Since the technical specifications are decisive for data protection the rapporteur proposes that experts viewing the technical specifications from a data-protection point of view should have the possibility of participating in the elaboration thereof. At the end they should have the possibility of evaluating the technical specifications from their perspective and of requesting, if necessary, that the work continue if any problems remain.

In addition to the careful preparation of the technical specifications the rapporteur urges Member States to continue to test technical solutions in a real-life environment and on a large scale before issuing the passports. This measure would also increase confidence in what is a relatively new technology.

In order for the introduction of biometrics to be a success the actual implementation by Member States will ultimately be of strategic importance. The rapporteur would like to stress that they will be responsible for providing their citizens with comprehensive information in good time and for ensuring that staff involved in all stages of the process (from enrolment to

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<sup>1</sup> See Article 17 of the data protection directive.

control) receive high-quality training.

Ultimately, the integrity of innocent citizens in an atmosphere of "impossibility of error" has to be protected under all circumstances. There will have to be guarantees to the effect that when border checks are carried out and a false rejection occurs, the citizens concerned will be informed of the reasons for such a rejection and of the means to be employed in order to clarify and rectify the situation as quickly as possible.

In conclusion, the rapporteur supports the introduction of biometrics, provided that citizens' rights and freedoms are always upheld.