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Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

PROVISIONAL
2003/0218(CNS)
2003/0217(CNS)

24 February 2004

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DRAFT REPORT

1. on the Commission proposal for a Council regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals
(COM(2003) 558 – C5-0467/2003 – 2003/0218(CNS))

2. on the Commission proposal for a Council regulation amending Regulation (EC) 1683/95 laying down a uniform format for visas
(COM(2003) 558 – C5-0466/2003 – 2003/0217(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Ole Sørensen

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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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PROCEDURAL PAGE

By letter of 24 September 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the Commission proposal for a Council regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals (COM(2003) 558 – 2003/0218(CNS)).

By letter of 24 September 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the Commission proposal for a Council regulation amending Regulation (EC) 1683/95 laying down a uniform format for visas (COM(2003) 558 – 2003/0217(CNS)).

At the sitting of 8 October 2003 the President of Parliament announced that he had referred the two proposals to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0467/2003, C5-0466/2003).

The committee appointed Ole Sørensen rapporteur at its meeting of 3 November 2003.

It considered the Commission proposals and draft report at its meetings of 4 November 2003, 25 November 2003, 18 March 2004 and 6 April 2004.

At the last meeting it adopted the draft legislative resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote ... (chairman/acting chair(wo)man), ... (vice-chair(wo)man), ... (vice-chair(wo)man), Ole Sørensen (rapporteur), ..., ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and

(The opinion(s) of the Committee on ... (and the Committee on ...) is (are) attached.) (The Committee on ... decided on ... not to deliver an opinion.)

The report was tabled on

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Commission proposal for a Council regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals
(COM(2003) 558 – C5-0467/2003 – 2003/0218(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 558)¹,
 - having regard to Article 63 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0467/2003),
 - 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 Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0000/2004),
1. Rejects the Commission proposal;
 2. Calls on the Commission to withdraw its proposal and submit a new one;
 3. Instructs the President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Commission proposal for a Council regulation amending Regulation (EC) 1683/95 laying down a uniform format for visas
(COM(2003) 558 – C5-0466/2003 – 2003/0217(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 558)¹,
 - having regard to Article 63 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0466/2003),
 - 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 Rules 67 and 61(4) of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0000/2004),
1. Rejects the Commission proposal;
 2. Calls on the Commission to withdraw its proposal and submit a new one;
 3. Instructs the President to forward its position to the Council and Commission.

¹ Not yet published in OJ..

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EXPLANATORY STATEMENT

The intention of the two Commission proposals is to include two biometric identifiers (facial image and two fingerprints) respectively in the visa and residence permit for third country nationals to be stored on a micro-chip. The storage of the facial image shall be implemented two years after the technical specifications have been decided upon by comitology. The deadline for the fingerprints is three years. The proposals also seek to advance the date for the photograph to be printed on the visa / residence permit from 2007 (originally decided in 2002) to 2005.

A first analysis by the rapporteur of the Commission proposals is set out in the working document of 14 November 2003, which was presented on 25 November 2003 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (PE 329.934). The rapporteur would in particular like to recall that in the concluding chapter of this working document he had raised a series of questions to which answers would need to be found in order to properly evaluate the Commission's proposals.

1. Opinion of the rapporteur on the two proposals

The rapporteur is not in a position to approve the proposals. The rapporteur is of the opinion that basic requirements for informed decision-making are not met. This concerns in particular the respect of the principle of proportionality. Moreover, the rapporteur is concerned about the respect of the fundamental right to the protection of personal data and the impact that the use of biometrics will have on ordinary citizens in the case of error. In addition, the rapporteur views the development of the Visa Information System, of which these two proposals are key elements, with great concern.

1.1 The proportionality of the proposals

Once it is concluded - following the subsidiarity test - that an action should be undertaken at European level an analysis of proportionality according to Article 5.3 TEC is required. The protocol on the application of the principles of subsidiarity and proportionality annexed to the Treaty establishing the European Community defines a series of criteria that have to be respected when legislation is adopted at the European level.

The rapporteur is firstly of the opinion that the Commission has failed to respect point 9 of the protocol that states:

"9. Without prejudice to its right of initiative, the Commission should:

...

- take duly into account the need for any burden, whether financial or administrative, falling

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upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved;"

The Commission in its explanatory memorandum has a chapter on the financial impact that starts with the following paragraph:

"It is rather difficult to specify the exact financial impact of these legislative measures, as the exact requirements are not yet known and will be established by the Committee created by Article 6 of Regulation (EC) 1683/95 laying down a uniform format for visas."

Later in the text the Commission explains that the cost of a micro-chip with sufficient storage capacity (a 64 K chip) "is not yet known". At no point in the text does the Commission provide a figure on the costs.

It might well be that it is not possible to indicate how much the implementation of the proposals will cost for Member States (as they will have to bear the costs for the chips, the enrolment equipment for the consular posts and the verification systems for each border post) but then the Commission cannot demonstrate that the costs are "minimised and proportionate to the objective to be achieved." It is also not possible for the European Parliament to make its own evaluation of the costs. The rapporteur is of the opinion that if the costs are not known then the Commission should not have made the proposals.

The rapporteur is secondly of the opinion that the Commission has failed to respect point 1 of the protocol that states:

"1. ...It [each institution] shall also ensure compliance with the principle of proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty."

The respect of the principle of proportionality requires proof that there are no other means to achieve the objective of increasing document security by establishing "a more reliable link between the holder and the visa format / residence permit as an important contribution to ensuring" ..protection.. "against fraudulent use." (recital 2 of the proposal on the visa and recital 3 in the proposal on the residence permit)

There are two fundamental questions in this respect that were posed by the rapporteur in the above mentioned working document. The first concerns the magnitude of the problem:

"How many visas are actually issued and especially how many of them are counterfeited, e.g. what is the magnitude of the problem the proposals try to solve ?"

Despite all efforts the "magnitude of the problem" is still unknown to the rapporteur. No statistics could be given by Commission or Council on the number or percentage of falsified

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visas / residence permits. Again it might well be that statistics exist but that Member States do not want to reveal them because they are afraid of being seen in a bad light by other Member States or attracting precisely those people that want to enter the territory of the EU by illegal means. All this might be the case but then it should not be expected that the European Parliament goes along with the proposals without being given the chance to make its own assessment of the need for the measures proposed.

The second fundamental question is:

"Are there not many additional security measures that could be applied before using biometric data to be stored on a chip on the visa /residence permit ? Is it not a very long way between the visa of today, which in some Member States is still filled in by hand, to the introduction of a visa with two biometric identifiers also stored on a chip and the significant investments needed to make such a system work?"

The rapporteur indeed considers that the proposals make an enormous step without proper proof that they are necessary. The latest modifications of the two regulations were made in 2002 ("the integration of a photograph according to high security standards"; recital 1 of the proposal on the visa) and are not being applied yet. Therefore no experience exists with visa / residence permits with a photograph printed on them. The justification that *"Member States have emphasised that they would like to see further enhancement of the security standards of the uniform format for visas and travel documents in general. They have made it clear that they are in favour of including biometric identifiers in the visa and the residence permit for third country nationals in order to establish a more reliable link between holder, passport and visa."* (page 2 of the explanatory memorandum) is simply not sufficient. It would need to be precisely and convincingly explained why the photograph is not sufficient.

1.2 Data protection

The use of biometrics requires careful scrutiny from a data protection perspective. In its chapter on "supervisory authority on data protection" in the explanatory memorandum the Commission voices in particular the concern that national data protection authorities are "currently under-resourced for their wide range of tasks" and that their workload will increase with the processing of biometrics (page 6). The rapporteur is very concerned about this problem too and considers that these problems should be solved before the present proposals come into force.

The Commission makes reference to the Working Document No. 80 on biometrics of the Article 29 Working Party. This document provides a very useful summary of all the problems related to the protection of personal data in the use of biometrics that should not be repeated here. The main issues to be looked at in the context of the present proposals are purpose and proportionality.

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The Commission also undertook to consult the Article 29 Working Party on data protection.

[chapter to be concluded after the hearing and once the opinion of the Art. 29 Working Party becomes available]

1.3. The use of biometrics in general

The rapporteur is worried about the error rates of biometric applications (most have at least an error rate of 1%). As can be seen currently from the US experience innocent citizens can - due to error - be subject to "special" treatment. In the present case this would be the refusal of entry.

[chapter to be concluded after the hearing]

1.4. The international framework

[chapter eventually to be added]

2. The Visa Information System (VIS)

The present two proposals are key elements in the development of the VIS because they provide the legal base for the collection of precisely the data that will later be entered in the VIS. The Rapporteur believes that it is very dishonest that the Commission does not to state this fact in its explanatory memorandum. It only refers to "in an initial stage..." (page 5) but remains silent on the second step.

The VIS project will be presented to Parliament in a piecemeal approach: first a proposal to allow for the financing of the development costs out of the EU budget (but only until 2006 and without biometrics)¹, secondly - in this consecutive order ! - the legislative proposal laying down VIS - but only after Council agreed on everything in the conclusions on VIS² - then maybe another financing proposal and so on. According to the Commission programming all these proposals should be adopted following the consultation procedure.

In the end, the outcome will be a central data base with data on visas and applicants that will be used for "verification and identification purposes, including background checks" for the purpose not only of the "prevention of "visa shopping" and the "fight against fraud" as always stated but also to contribute "towards internal security and to combating terrorism."³

Central storage and identification provide the greatest concerns for data protection.

¹ Proposal for a Council decision establishing the Visa Information System (VIS), (COM(2004)99)

² Council conclusions on the development of the Visa Information System (VIS) adopted on 19 February 2004

³ *ibid.*

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The rapporteur would like to point out that for the development of such a system as well, correct standards of decision-making must apply. He considers the development of such a system - just because Member States want it - as irresponsible given all its uncertainties as regards costs, data protection and the use of biometrics in general and at a large scale ("However, with the use of biometrics on such an unprecedented scale, the system will enter a new and largely unknown dimension", COM (2003) 771, p.24), in such a piecemeal way and also without proper participation of the European Parliament.

3. Conclusion

To summarise: The Commission proposed at the request of Member States a solution to a largely unknown problem, the costs of which are unknown as well but likely to be very high. The idea is to include all the data collected in a second step into the still to be explained and developed VIS. Many data protection issues are on the table but not thoroughly discussed yet.

The rapporteur therefore proposes not to approve the Commission proposals.