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COMIX 613**

INTRODUCTORY NOTE

from: Council General Secretariat
to: Council/Mixed Committee at Ministerial level

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Subject : Draft Council Regulation on standards for security features and biometrics in
passports and travel documents issued by Member States

1. INTRODUCTION

The Commission submitted the proposal for a Council Regulation on standards for security features and biometrics in passports and travel documents issued by Member States to Council on 23 February 2004.

After the finalisation at technical level, the text and the outstanding issues were submitted to the Permanent Representatives' Committee/Mixed Committee at Senior Officials level.

2. OUTSTANDING ISSUES

At the meeting of the Mixed Committee at Ministerial Level on 8 June 2004, there was broad agreement that facial image should be the first mandatory biometric identifier to apply from the date of application of the measure, and that the second and optional identifier should, in principle, be fingerprints (Article 1 (2)). However, at the meeting of the Mixed Committee at Senior Officials level a number of delegations (**IT, DE, FR, EL, ES, MT, LT, PL** and **SI**) reiterated their wish to render the second identifier mandatory from the date of application as well. These delegations wanted this question to be addressed at political level.

Other delegations (**SE, EE, FI** and **LV**) stated that they could not accept this re-opening of discussions on the second biometric identifier to become mandatory. Yet others (**DK, PT**), without being opposed to the idea of a second mandatory identifier, emphasised the technical and financial implications.

The further discussions showed that the two outstanding issues are closely linked, as delegations indicated that the introduction of even one biometric identifiers could in not be accomplished within the timeframe of 12 months set out in the original Commission proposal.

Two delegations (**DE** and **DK**) indicated that they would start issuing biometrically enhanced passports from the end of 2005, integrating only one feature in order to comply with the requirements of the International Civil Aviation Organisation (ICAO) and the requirements of the US Visa Waiver legislation.

The **Commission representative (Comm.)** has at several occasions recalled the political background for a rapid application of the instrument and reminded delegations that the European Council in its conclusions of 25 March 2004 "instructed Council to adopt, by the end of 2004, the Commission's proposal for the incorporation of biometric features into passports with a view to the finalisation of the technical specifications to be adopted by the Commission by the same deadline", Comm. noted that it would seem unwarranted not to comply with this deadline by deferring the date of application beyond 12 months. Comm. also reminded delegations that it was unlikely that the United States' Congress would allow for a second postponement of the deadline for the requirement of holding a biometrically enhanced travel document in order to be able to travel "visa free" to the United States (the original deadline of 26.10.2004 has been changed to 26.10.2005).

3. POSSIBLE COMPROMISE SOLUTION

On the basis of the above, there seemed to a basis for an agreement among delegations to the following solution:

- the first mandatory biometric identifier, i.e. facial image, should apply at the latest 18 months after the adoption of the technical specifications,
- the second mandatory biometric identifier, i.e. fingerprints, should apply at the latest 36 months after the adoption of the technical specifications. This time frame would be in line with the one set for the visa stickers and residence permits.

3. FURTHER PROCEEDINGS

The Permanent Representatives' Committee/Mixed Committee at the level of Senior Officials invites the Justice and Home Affairs Council/Mixed Committee at Ministerial Level to endorse the general approach set out above at its session on 26 October 2004, pending the opinion of the European Parliament.

Draft

COUNCIL REGULATION

**on standards for security features and biometrics in passports and travel documents issued by
Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62 (2)
a) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) The European Council of Thessaloniki confirmed that a coherent approach is needed in the EU on biometric identifiers or biometric data for documents for third country nationals, EU citizen's passports and information systems (VIS and SIS II).
- (2) Minimum security standards for passports were introduced by a Resolution of the Representatives of the Governments of the Member States meeting within the Council on 17 October 2000³. It is now appropriate to upgrade this Resolution by a Community measure in order to achieve enhanced harmonised security standards for passports and travel documents to protect against falsification. At the same time biometric elements should be integrated in the passport in order to establish a reliable link between the genuine holder and the document.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C 310, 28.10.2000, p.1.

- (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 and the travel document as an important contribution to ensuring that it is protected against fraudulent use. The specifications from the International Civil Aviation Organisation, and in particular those set out in document No. 9303 on machine readable travel documents should be taken into account.
- (4) This Regulation is limited to the harmonisation of the security features including biometric identifiers for the passports and the travel documents of the Member States. The designation of the authorities and bodies authorised to have access to the data contained in the storage medium of documents is a matter of national legislation, subject to any relevant provisions of Community law, European Union law or international agreements.
- (5) This Regulation only should lay down such specifications that are not secret. These specifications need to be supplemented by specifications which are to remain secret in order to prevent the risk of counterfeiting and falsifications. Such additional technical specifications should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.
- (6) The Commission should be assisted by the Committee established by Article 6 of Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas.
- (7) In order to ensure that the information referred to is not made available to more persons than necessary, it is also essential that each Member State should designate not more than one body having responsibility for producing the passport and travel documents, with Member States remaining free to change the body, if need be; for security reasons, each Member State must communicate the name of the competent body to the Commission and the other Member States.

- (8) With regard to the personal data to be processed in the context of the passport and travel documents, 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 data¹ applies. It must be ensured that no further information shall be stored in the passport unless provided for in the regulation, its annex or unless it is mentioned in the relevant travel document.
- (9) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing common security 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.
- (10) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is therefore not bound by it or subject to its application. However, given that this Regulation aims to build upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark will, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will transpose it into its national law.

¹ OJ L 281, 23.11.1995, p. 31.

- (11) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (12) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (13) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement¹.

HAS ADOPTED THIS REGULATION:

Article 1

1. Passports and travel documents issued by Member States shall comply with the minimum security standards set out in the Annex.

¹ OJ L 176, 10.7.1999, p. 31.

2. The passports and travel documents shall include a storage medium which shall contain a facial image. The Member States [may] ¹ also include fingerprints in interoperable formats. The data must be secured and the storage medium shall have sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data.
3. This Regulation applies to passports and travel documents issued by Member States. It does not apply to identity cards issued by Member States to their nationals or to temporary passports and travel documents having a validity of 12 months or less.

Article 2

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

- (a) additional security features and requirements including enhanced anti-forgery, counterfeiting and falsification standards;
- (b) technical specifications for the storage medium of the biometric information and its security, including prevention of unauthorised access;
- (c) requirements for the quality and common standards for the facial image and the fingerprints.

¹ Text to be adapted depending on final decision at Council/Mixed Committee level.

Article 3

1. In accordance with the procedure referred to in Article 5 (2) it may be decided that the specifications referred to in Article 2 shall be secret and not be published. In such case, they shall be made available only to the bodies designated by the Member States as responsible for the printing and to persons duly authorised by a Member State or the Commission.
2. Each Member State shall designate one body having responsibility for printing the passport and travel document. It shall communicate the name of that body to the Commission and the other Member States. The same body may be designated by two or more Member States. Each Member State shall be entitled to change its designated body. It shall inform the Commission and the other Member States accordingly.

Article 4

1. Without prejudice to data protection rules, persons to whom the passport or travel document is issued shall have the right to verify the personal data contained in the passport and, where appropriate, to ask for rectification or erasure to be made.
2. No information in machine-readable form shall be included in the passport or travel document unless provided for in this Regulation, or its Annex, or unless it is mentioned in the passport by the issuing Member State according to its national legislation.
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
 - 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.

Article 5

1. The Commission shall be assisted by the Committee set up by Article 6(2) of Regulation (EC) No 1683/95.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.
3. The Committee shall adopt its rules of procedure.

Article 6

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

The Member States shall apply this Regulation at the latest [...] ¹ following the adoption of the measures referred to in Article 2. However, the validity of passports and travel documents already issued shall not be affected.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, [...]

For the Council

The President

[...]

¹ Text to be adapted depending on final decision at Council/Mixed Committee level.

Minimum security standards of passports and travel documents issued by the Member States**Introduction**

This Annex lays down the minimum level of security that the Member States' passports and travel documents are required to provide. The provisions in the Annex are concerned primarily with the biographical data page. The generic security features also apply to the other parts of passports.

The biographical data page can consist of various basic materials. The Annex specifies the minimum level of security for the specific material that is used.

1. Material

The paper used for those sections of the passport or travel document giving personal particulars or other data shall meet the following minimum requirements:

- no optical brighteners,
- duo-tone watermarks,
- security reagents to guard against attempts at tampering by chemical erasure,
- coloured fibres (partly visible and partly fluorescent under UV light, or invisible and fluorescent in at least two colours),
- UV-fluorescent planchettes are recommended (for stickers mandatory),
- the use of security thread is recommended.

If the biographical data page is in sticker form, the watermark can be dispensed within the paper used for that page. The watermark can also be dispensed within the paper used for the inside of the passport covers. Security reagents are required on the inside covers only if data are entered there.

Stitching thread should be protected against substitution.

If a card for inserting personal data in the passport is made entirely of a synthetic substrate, it is not usually possible to incorporate the authentication marks used in passport paper. In the case of stickers and cards, the lack of marks in the materials shall be compensated for by measures in respect of security printing, use of an anti-copying device, or an issuing technique according to Sections 3, 4 and 5 over and above the following minimum standards.

2. Biographical data page

The passport shall contain a machine-readable biographical data page, which shall comply with ICAO-Document 9303 on machine-readable passports (Part 1) and the way it is issued, with the specifications for machine-readable passports set out therein.

The portrait of the holder shall also appear on this page and shall not be affixed but integrated into the material of the biographical data page by the issuing techniques as referred to in Section 5 of this annex.

The biographical data shall be entered on the page following the title page in the passport. In any event, an inside cover page should no longer be used for biographical data.

The layout of the biographical data pages shall be such that it is distinguishable from the other pages.

3. Printing techniques

The following printing techniques shall be used:

- Background printing:

- two-tone guilloches or equivalent structures,
- rainbow colouring, where possible fluorescent,
- UV-fluorescent overprinting,
- effective anti-counterfeiting and anti-falsification motifs (especially on the biographical data page) with optional use of micro-printing,
- reagent inks must be used on paper passport pages and stickers,
- if the paper of the passport is well protected against attempts at tampering, the use of reagent inks is optional.

- Form printing:

With integrated micro printing (unless already included in background printing).

- Numbering:

On all pages inside the passport a unique document number should be printed (where possible with a special style of figures or typeface and in UV-fluorescent ink), or perforated or, in passport cards a unique document number should be integrated using the same technique as for the biographical data. It is recommended that in passport cards the unique document number is visible on both sides of the card. If a sticker is used for biographical data the unique document number should be printed, using fluorescent ink and a special style of figures or typeface is obligatory.

If stickers or non-laminated paper inside pages are used for biographical data, intaglio printing with latent image effect, micro text and ink with optically variable properties and a DOVID (Diffractive Optically Variable Image Device) shall also be employed. Additional optically variable security devices shall also be used on passport cards made entirely of a synthetic substrate, at least through the use of a DOVID or equivalent measures.

4. Protection against copying

An optically variable (OVD) or equivalent device, which provides for the same level of identification and security as currently used in the uniform format for visas shall be used on the biographical data page and shall take the form of diffractive structures which vary when viewed from different angles (DOVID) incorporated into the hot-sealed or an equivalent laminate (as thin as possible) or as an OVD overlay, or, on stickers or a non-laminated paper inside page, as metallised or partially de-metallised OVD (with intaglio overprinting) or equivalent devices

The OVD devices should be integrated into the document as an element of a layered structure, effectively protecting against forgery and falsification. In documents made of paper, they should be integrated over as wide a surface as possible as an element of the hot-sealed or an equivalent laminate (as thin as possible) or security overlay, as described in Section 5. In documents made of a synthetic substrate, they should be integrated in the card layer over as wide a surface as possible

If a synthetic card is personalised by laser engraving, and an optically variable laser written device is incorporated therein, the diffractive OVD shall be applied, at least in form of a positioned metallised or transparent DOVID to achieve an enhanced protection against reproduction.

If a biographical data page is made of a synthetic substrate with paper core, the diffractive OVD shall be applied at least in the form of a positioned metallised or transparent DOVID to achieve an enhanced protection against reproduction.

5. Issuing technique

To ensure that passport data are properly secured against attempts at counterfeiting and falsification, biographical data including the holder's portrait, the holder's signature and main issue data shall be integrated into the basic material of the document. Conventional methods of attaching the photograph shall no longer be used.

The following issuing techniques may be used:

- laser printing,
- thermo-transfer,
- ink-jet printing,
- photographic,
- laser-engraving that effectively penetrates into the card layers bearing the security characteristics.

To ensure that biographical and issue data are adequately protected against attempts at tampering, hot-seal or equivalent lamination (as thin as possible) with an anti-copying device is compulsory where laser printing, thermo-transfer or photographic techniques are used.

EU travel documents must be issued in machine-readable form. The layout of the biographical data page must follow the specifications given in ICAO Document 9303, Part 1, and the issuing procedures must meet the specifications it sets for machine-readable documents.

DRAFT COUNCIL STATEMENT

The Council considers that the most effective method of protecting against the illegal issue of stolen blank passports is to centralise the issuing procedure and therefore recommend that where passports continue to be issued on a regional or decentralised basis, appropriate security measures shall be taken in terms of logistics, administration and issuing techniques. This applies particularly to the storage of blank passports and of the material used for filling them in. Computerised issuing systems can also be used to authenticate passport issue ("electronic seal") if due account is taken of suitable programming.
