



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**VISA 333
COMIX 1051**

OUTCOME OF PROCEEDINGS

of: Visa Working Party/Mixed Committee (EU-Iceland/Norway/Switzerland)
dated: 6 December 2006

No. prev. doc. 13609/06 VISA 238 COMIX 804

No. Cion prop.: 7298/06 VISA 80 COMIX 267 (COM(2006) 110 final)

Subject: Modified draft Council Regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals

1. Preliminary outcome of examination in the Article 6 Committee of specific technical issues

The **Commission's representative (COM)** informed delegations that the Committee established by Article 6 of Council Regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas (hereinafter: "the Article 6 Committee") had examined the questions submitted in October (12893/06 VISA 227 COMIX 758) in two meetings and reflections was still ongoing. A draft report had been submitted to delegations and once their comments had been examined it would be decided whether the draft could be turned into final concluding answers or whether it would be necessary to convene an additional meeting. A final report was likely to be available end January 2007.

COM briefly outlined some of the preliminary findings of the Article 6 Committee:

There seems to be a general consensus that there would be no interference between a contact chip and a contact less chip in cases where both were incorporated as the technologies used are fundamentally different. It also seems possible to separate national and biometric data stored on the residence permit either "physically" or "logically". Three options seem viable but the costs and the technical specifications must be considered further. As far as the possibility of incorporating additional technical security features, two options have been examined, taking account of the necessity of maintaining the uniform design and appearance of the permit and of avoiding affecting the existing common security features. In addition, the issue of inserting entries in several languages on the residence permit, COM noted that experiments had been carried out which indicated problems of readability. **DK** was rather surprised by the latter statement and emphasised that this issue was of major importance to Denmark.

2. Age limits and exemptions from giving biometric data

The **Chair** recalled the compromise solution allowing some room for Member States' discretion in relation to the collection of biometric data from children and referred to the result of the "survey" of Member States' practices for issuing individual residence permits to children (15884/06 VISA 308 COMIX 999) which seemed to point in the direction of a very low age limit.

SE maintained its support for a harmonised approach and a lower limit of 6 years. **FI, LU** and **NL** supported this. **DE** maintained its support for a compromise allowing Member States to collect data from the age of 6 and to make this compulsory from the age of 12. **PT** tended to support this.

DE wondered whether an exemption from submitting photographs should not be given to infants.

UK did not agree as it would seem pointless to issue an individual residence permit without photo and fingerprints. **EE, LV, DK** and **NO** supported this point of view. **UK** maintained its wish for an age limit of 5 years for taking fingerprints as this is current practice in United Kingdom now. This delegation wondered whether Member States would be allowed to store biometric data collected on the national part of the chip in case they wished to collect data from an earlier age than the one eventually established by the Regulation.

In relation to residence permits, **COM** favoured a harmonised approach, an age limit of 6 years and that the data be stored on a chip for "1-to-1" verification and not in a database for the purpose of "1-to-many" verification because the reliability of fingerprints is only acceptable for children above 12 years. COM wondered whether as consequence of the introduction of a possible age limit of 6 years for collecting biometric data would be that all Member States would have to start issuing individual residence permits to children from that age.

The **Chair** concluded that further examination was necessary to clarify Member States' view on the issue of age limits and exemptions.

In response to queries from **LU** and **UK**, **COM** noted that in addition to the question of storage capacity of the chip, a more fundamental question should be addressed: what type of data could be added for the purpose of "e-government"? The issue of separation of biometric data and information for the purpose of "e-government" has been raised in the EDPS opinion.

In reply to the request from **LU** in relation to the lack of exemptions from giving biometric data in the "passports' Regulation", COM indicated that the Commission would submit a proposal for an amendment to Regulation 2252/04 providing for such common rules.

2. Uniform format for residence permits for family members of EU-citizens

The written contribution presented by the Council Legal Service at the previous meeting (13148/06 JUR 354 VISA 234 MI 171) was currently under examination by the Commission Legal Service. However, COM indicated that the Commission Services were currently reflecting on alternative solutions in case the final outcome would be that there was no legal basis for drawing up a uniform format for residence permits for this category of persons. COM indicated that a possible solution could be to follow the precedent created by Regulation (EC) 1683/95 laying down the uniform format for visas, Article 7¹, which allows for the use of the uniform visa format for purposes other than those covered by that Regulation, (i.e. Member States can use the uniform format when issuing national visas as well), provided that "other purpose" is clearly indicated.

¹ OJ L 164, 14.7.1995, p.1

In addition, in order to ensure a harmonised approach, all Member States would have to commit themselves to use this uniform format for residence permits for family members of EU citizens that have exercised their right of free movement. They could also commit themselves to use it for members of the family of EU citizens residing in the Member State of which they have the nationality and which are thus not (yet) beneficiaries of the right to free movement and to maintain the permits clearly distinct from the residence permits issued to third country nationals. In this manner, the situation when this category of persons effectively exercises their right to free movement would be covered - and facilitated - as well. **UK** found this suggestion most interesting. The **Chair** concluded that this possibility could be explored further, once it had been established what the legal situation was.

3. Short-stay residence permits

Referring to the comments made in previous meetings (13609/06 VISA 238 COMIX 804, page 3) on this subject, **DE** informed delegations that Germany would seek to solve the problems in relation to the possible storage of biometric data on residence permits of a validity of max. three months at national level.

However, according to this delegation one problem remained outstanding, i.e. extension of residence permits. This delegation found that it might be questionable to issue a new document with full scale security features if the extended permit was only to last for a few weeks. The same problem would exist with regard to nationals of third countries who are exempt from the requirement to be in the possession of a visa for stays of no more than three months in total, if they apply for a short-time extension of their stay beyond three months while being already in the Schengen area. **COM** maintained the point made earlier, wondering whether it would be reasonable that a person who was issued a visa allowing him to stay for three days in the Schengen area should have his biometric data stored in the VIS whereas a person who is issued residence permits allowing him to stay and circulate for a longer period in the Schengen area would be exempted from giving biometric data. **COM** wished to know what practice Member States follow currently when extending the validity of residence permits.

DE was of the opinion that a solution should be found to cover situation where the residence permit just had to be extended for a few weeks: A new document should be issued replacing the expired permit that would be valid only in connection with the expired permit and only up to two months. In the case of nationals of third countries who are exempt from the requirement to be in the possession of a visa for stays of no more than three months in all, the new document could be valid as a stand-alone document for up to two months. **DE** added that this was a question of adding a provision on the material form of an extension, and thus this was not covered by the current text Article 1 (1a), page 10.

The **Chair** wondered whether a new survey should be launched among Member States to get an overview of how residence permits were extended.

4. Opinion of the European Data Protection Supervisor (EDPS)

The **Chair** briefly presented the opinion of the EDPS submitted end October. The opinion was circulated to delegations. **COM** noted that it would not be possible to reply to the EDPS before the final outcome of the deliberations of the "Article 6 Committee". However, **COM** made the following preliminary comments: it might be relevant to consider adding the number of fingerprints to be collected, fall back procedures should also be considered and it might be timely to add a definition of the authorities who have access to the data or to introduce a system of notification of these authorities. **LU** indicated that for reasons of capacity it would not be possible to collect more than two fingerprints, whereas **UK** suggested that for reasons of reliability and accuracy of the verification as many fingerprints should be collected as possible because the storage problem was likely to be solved by technological development.

The draft Proposal is set out in the Annex to this note with delegations' comments set out in footnotes, including those made at the July and October meetings.

Modified draft

COUNCIL REGULATION¹

**amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for
third-country nationals**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular
Article 63 (3)a) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Amsterdam Treaty aims to establish progressively an area of freedom, security and justice and confers the right of initiative to the Commission in order to take the relevant measures on a harmonised immigration policy.
- (2) It is essential that the uniform format for residence permits should contain all the necessary information and meet very high technical standards, in particular as regards safeguards against counterfeiting and falsification; this will contribute to the objective of preventing and fighting against illegal immigration and illegal residence. It must also be suited to use by all the Member States.

¹ **UK:** parliamentary reservation. **IE:** scrutiny reservation.

² OJ C , , p. .

- (3) The integration of biometric identifiers is an important step towards the use of new elements, which establish a more reliable link between the holder and the residence permit as an important contribution to ensuring that it is protected against fraudulent use. The specifications set out in the ICAO document No 9303 Part 3 on Size 1 and 2 machine readable official documents should be taken into account.
- (3a) At its meeting in Thessaloniki on 19 and 20 June 2003 the European Council stressed that a coherent approach was 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.
- (4) The use of new technologies such as e-government and digital signature for access to e-services should be facilitated by giving Member States the possibility to use the same or an additional storage medium for that purpose in residence permits.¹
- (5) This Regulation only lays down such specifications that are not secret; these specifications need to be supplemented by further specifications which may remain secret in order to prevent counterfeiting and falsifications and which may not include personal data or references to such data. Powers to adopt such supplementary specifications should be conferred to the Commission, who shall be assisted by the Committee established by Article 6 of Council Regulation (EC) n°1683/95 of 29 May 1995 laying down a uniform format for visas².

¹ **FR** stated that this issue is linked to the decision regarding possible second chip. It entered scrutiny reservation pending the outcome of discussions in the "Article 6 Committee".

² OJ L 164, 14.7.1995, p. 1. Regulation as amended by Regulation amending Regulation 1683/95 laying down a uniform format for visas.

- (6) With regard to the personal data to be processed in the context of the uniform format for residence permits, Directive 95/46/EC¹ of the European Parliament and of the Council of 24.10.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data applies, it must be ensured that no further information shall be stored on the uniform format for residence permits unless provided for in the regulation, its annex or unless it is mentioned in the relevant travel document.
- (7) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing biometric identifiers in interoperable formats 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.
- (8) 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 is not participating in the adoption of this Regulation, and is therefore not bound by it or subject to its application. 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.
- (9) 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 Agreement².

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 176, 10.7.1999, p. 31.

- (10) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 29 December 2003, of its wish to take part in the adoption and application of this Regulation.
- (11) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland gave notice, by letter of 19 December 2003, of its wish to take part in the adoption and application of this Regulation.
- (12) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 4 (1) of the Council decision on the signing, on behalf of the European Community, and on the provisional application of certain provisions of this Agreement.
- (13) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the Act of Accession.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1030/2002 is hereby amended as follows:

(1) In Article 1 (1), the second sentence is replaced by the following:

"The residence permit shall only be issued as a stand-alone document in ID 1 or ID 2 format".

(1a) Article 1 (2) (a)(ii) reads as follows:

"Permits issued pending examination of a request for asylum, an application for a residence permit or for its extension."

(2) Article 2 (1), the following points d) and e) are added:

"d) technical specifications for the storage medium of the biometric features and the security thereof, including prevention of unauthorised access;¹

e) requirements for the quality of and common standards for the facial image and the fingerprint images."

f)²

¹ Replying to questions raised by **AT** and **UK**, **COM** noted that Member States are entitled to check against their own national database, and that this proposal only covered the common format of residence permits and not the procedures for application of issuance of residence permits, adding that issues related to external border crossing were not to be covered by this proposal either.

² **DE** suggested an additional paragraph which would read as follows: "common standards and formats for storage of the data referred to in points 7.5-9 of the Annex". This suggestion is linked on the footnotes on page 9 and 12 and is related to interoperable format of storage of data and the question as to whether secondary data can also be stored. **COM** noted that the final drafting of this would depend on the outcome of work of the "Article 6 Committee".

(3) In Article 3, the first paragraph is replaced by the following:

"In accordance with the procedure referred to in Article 7 (2), it may be decided that the specifications referred to in Article 2 shall be secret and not be published. In that 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."

(4) In Article 4, the second paragraph is replaced by the following:

"No information in machine-readable form shall be included on **the resident permit or on the** storage medium of the residence permit referred to in Article 4a, unless provided for in this Regulation, or its Annex or unless it is mentioned in the related travel document by the issuing State in accordance with its national legislation. Member States may include in the residence permit an additional contact chip as set out in Part 16 of the Annex to this Regulation for e-services such as e-government and e-business)."¹

For the purposes of this Regulation, the biometric features in residence permits shall only be used for verifying²:

- (a) the authenticity of the document;
- (b) the identity of the holder by means of directly available comparable features when the residence permit is required to be produced by law."

¹ **DE** maintained the suggestion for a new formulation of Article 4 (2): "... In addition, Member States may store, in interoperable formats, supplementary provisions relating to the residence permit in **one of the chips** referred to in Article 4(a) **and Part 16 of the Annex to this Regulation**; however, these supplementary provisions must be logically separated from biometric data." **COM** noted that the whole issue should be considered in relation to data protection concerns. The **Chair** concluded that this issue should be dealt with when the Commission Services had clarified this issue with data protection experts.

² **AT** entered a substantial scrutiny reservation on this paragraph as a residence permit allows the holder to cross borders and in the light of the different access possibilities to the VIS for authorities provided for via the draft Decision on access to the VIS and the proposal for a Regulation on the VIS currently under examination.

(5) The following Article 4a is inserted:

"Article 4a

"The uniform format for residence permits shall include a storage medium containing the facial image and two fingerprints images of the holder¹, both in interoperable formats. The data shall be secured and the storage medium shall be of sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data."

(6) In Article 9, the third paragraph is replaced by the following:

"The integration of the photograph provided for in point 14 of the Annex shall be implemented at the latest on []². The storage of the facial image as primary biometric identifier shall be implemented at the latest two years, and the storage of the two fingerprint images at the latest three years after the adoption of the respective technical measures provided for in Article 2 (1) d) and e).

For a transitional period of two years after the adoption of the first technical specifications for facial image referred to in the third paragraph of Article 9 the residence permit may continue to be issued in sticker form."

The Annex is amended in accordance with the Annex to this Regulation.

¹ See point 2 on page 2.

² Date to be added - depending on the date of adoption of the text under examination.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President

The Annex to Regulation (EC) No 1030/2002 is amended as follows:

(1) Point (a) is amended as follows:

(1) The first paragraph is replaced by the following;

"(a) Description

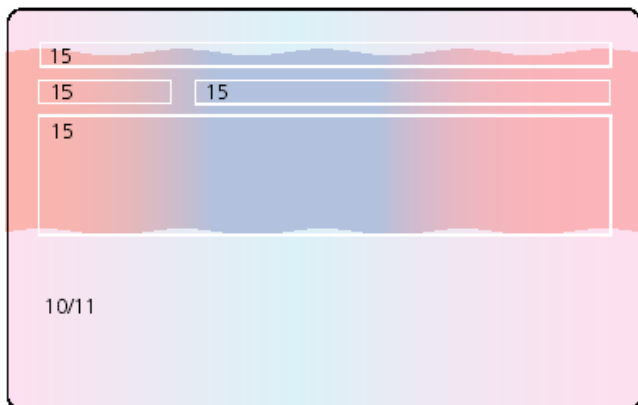
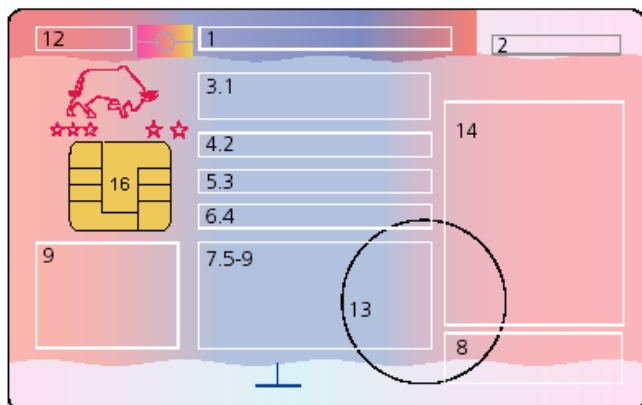
The residence permit will be produced as a stand-alone document in ID 1 or ID 2 format. It will be based on the specifications set out in the ICAO documents on machine-readable visas (document 9303, part 2) or on machine-readable travel documents (cards) (document 9303, part 3). The residence permit in sticker form may only be issued until two years after the adoption of the technical specifications referred to in the third paragraph of Article 9. It will contain the following entries:....."

(2) The following new point 16 is added:

"16. Member States may incorporate in the residence permit a separate contact chip for national use which shall comply with ISO standards and shall in no way interfere with the RF chip."¹

¹ DE suggested to replace the current text by the following text: "**Member States may for national use include data on the RF chip in the residence permit or for these purposes introduce a separate contact chip which shall comply with ISO standards and shall in no way interfere with the RF chip**".

(3) The following model is to be inserted:



(4) The reference "Residence permit for third country national in sticker form" should be renamed in "Residence permit in ID 2 format".

(5) After point 8 in the Annex it is suggested that the following two points are inserted:

8.a:

The headings referred to in numbers 1 to 8 should be indicated in the issuing Member State's language(s). The issuing Member State may add 1 or 2 other Community languages, either in the same line or below each other.

8.b:

At the bottom of the front of the residence permit card Member States may indicate the issuing Member State and "residence permit", e.g. "[Danish] residence permit", in one or more Community languages."¹

¹ This suggestion by **DK** was supported by a number of delegations. The **Chair** noted that such an addition would be optional. **COM**, supported by **EE** and **LT**, agreed but was in favour of a harmonised approach. **FR** noted that this would require that there was enough space on the residence permit which might eventually contain two separate chips. **DE** preferred that current formulation, noting that if this requirement be made compulsory, the question of languages would have political implications.