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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the requirements for children crossing the external borders of the Member States

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1. INTRODUCTION

Regulation (EC) No 444/2009¹ of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States (hereinafter: the Regulation) introduced the principle of 'one person-one passport'. According to this principle, passports and travel documents shall be issued as individual documents; family or other group passports can no longer be issued. The principle was recommended by the International Civil Aviation Organisation (ICAO) already in 1997 since it is considered more secure if every person – including children - has his/her own passport².

This report responds to the obligation in Article 1 of the Regulation according to which "the Commission shall to present a report on the requirements for children travelling alone or accompanied, crossing the external borders of the Member States not later than 26 June 2012 and propose, if necessary, appropriate initiatives in order to ensure a common approach regarding the rules for the protection of children crossing the external borders of the Member States". The present document is based on an extensive study carried out for the Commission (hereinafter: the Study³) on the legislation and practices of the EU, its Member States and the Schengen associated countries⁴ regarding the issue of EU and third-country national children⁵ - alone or accompanied - crossing the external borders⁶. The report deals (specifically) with checks on children *legally* crossing the external borders.

2. IMPLEMENTATION OF THE 'ONE PERSON-ONE PASSPORT' PRINCIPLE

Most Member States have been following this principle already for many years. Nevertheless the Regulation set a transitional period according to which the principle had to be implemented by the Member States at the latest on 26 June 2012 in a way that "the initial validity for the holder of the document shall not be affected".

The latter provision meant that:

¹ OJ L 142, 6.6.2009, p. 1

² <http://legacy.icao.int/icao/en/atb/sgm/OnePassportConcept.htm>

³ The study was carried out by the Ramboll-EurAsylum consortium under the External Borders Fund. The final report can be found on the website of the Directorate General Home Affairs of the European Commission: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/general/index_en.htm. It covers a series of questions related to the issue of children crossing the borders. This report however targeted the core ones such as the impact of the 'one person-one passport' principle.

⁴ Iceland, Liechtenstein, Norway and Switzerland

⁵ In line with Article 1 of the UN Convention on the rights of the child, for the purposes of this report, the child is considered every human being below the age of 18.

⁶ In line with the absence of controls at internal borders and with Article 1 of the Regulation, this report does not discuss the issues related to the movement of children within the Schengen area, although the Commission is aware that there are child trafficking and abduction cases there as well.

- From 26 June 2012 passports of EU citizens are to be issued only as individual documents.
- After this date, all children regardless of their age need to have their own EU passport and they are not allowed to travel solely on the basis of inscription in their parents' passports.
- Passports of the parents remain valid for the latter (i.e. the holder) after 26 June 2012 even if they contain their children's names.

However, a few Member States had a different understanding on the nature of the transitional period and argued that they were still allowed to issue passports containing inscription of children (so-called family passports) until 26 June 2012 and that children's entries would remain valid for the whole period of validity of the passport.

The Commission made it clear in the relevant Council working group that such an interpretation would go against the objective of the provision and the setting of the 3-year transitional period.

The Commission provided further guidance on the subject in the form of a Recommendation of 14 December 2012⁷ amending the Recommendation establishing a common "Practical Handbook for Border Guards (hereinafter: Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C (2006) 5186 final)⁸.

It clarifies that the Regulation does not apply to Ireland and the United Kingdom and it does not apply to passports issued by third countries either. The Recommendation recalls that the provisions of Directive 2004/38/EC⁹ on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States apply. In accordance with Article 5(4) of the Directive¹⁰, the absence of an individual passport for children entered in the passport of their parents should not automatically lead to a refusal to leave or to enter the territory of a Member State. The inscription of the child in the passport of the parents could be considered as "another means to prove that they are covered by the right to free movement".

In a large majority of the Member States the principle of 'one person-one passport' has been put in place years ago on the basis of national law. Only a few Member States waited until 26 June 2012 to fully phase out family passports.

No problems have been reported by the Member States or identified by the study regarding the introduction of the principle. In fact the study showed that the 'one person-one passport' principle has been well received by all relevant stakeholders and in particular the border guards, national authorities and NGOs working in the field of child protection. It is considered

⁷ C(2012) 9330 final

⁸ C(2006) 5186 final

⁹ OJ L 158, 30.4.2004, p. 77

¹⁰ "Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence."

by most that it has made travelling of children safer and border crossings faster, insofar as it is now possible for border guards to actually identify a child as being the person in the passport.

In certain cases, it had become more challenging to link a travelling child to his/her parent when they do not have the same surname. In this regard, the idea of including information on parent(s)/legal guardian(s) in the child's passport is supported by several stakeholders, including Frontex¹¹.

3. CHILDREN SPECIFIC LEGISLATION AND PRACTICES AS REGARDS CROSSING THE BORDERS

The 'one person-one passport' concept is only one requirement aiming at securing border crossings of children, safeguarding their rights as well as fighting against abduction and trafficking. There are several other provisions and processes at EU and national level in this regard. The objective of this Chapter is to provide a brief overview of the most relevant provisions and practices.

3.1. Legislation and practices at EU level

The main provisions concerning border crossings of children at the external borders of the Schengen area are specified in Regulation (EC) No 562/2006¹² establishing a Community Code on the rules governing the movement of persons across borders (hereinafter: **the Schengen Borders Code**) and its annexes¹³. Apart from recalling that "border guards shall pay particular attention to minors", point 6 of Annex VII to the Schengen Borders Code specifies that, in respect of accompanied children, it is necessary to check that the persons accompanying the children have parental custody over them. This should, in particular, be done when the child is accompanied by only one adult, or where the border guards suspect that the child might have been unlawfully removed from the custody of the legal guardian. In case of "serious grounds for suspicion", further investigations shall be carried out by the border guards. With respect to children who are travelling unaccompanied, as a general rule, thorough checks on children' documents are to be carried out by the border guards.

Furthermore point 3.7 of Part Two, Section 1 of the **Practical Handbook for Border Guards**¹⁴ provides that if any doubt exists concerning the authorisation of the child to cross the border on exit, the border guards should contact the national contact point¹⁵ of the Schengen Member State of the child's nationality or residence. If any information gives rise to suspicion of abduction or unauthorised exit, the border guards may refuse the exit of the child, or collect all available information concerning the destination of the child and the person accompanying him/her.

¹¹ This idea was also presented during the negotiations of the Regulation. However, it was given up because of different reasons such as the legal basis of such a provision (see also point 5.1).

¹² OJ L 105, 13.4.2006, p. 1

¹³ In particular, Annex VII: Special rules for certain categories of persons

¹⁴ Commission Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C(2006) 5186 final) as amended by Commission Recommendation C(2008) 2976 final

¹⁵ The national contact points for consultation purposes on minors are listed in Annex 37 of the Handbook.

For third-country nationals entering the Schengen area and falling under the visa obligation, the procedures and conditions are laid down in Regulation (EC) No 810/2009¹⁶ establishing a Community Code on Visas (hereinafter: **the Visa Code**). As far as children are concerned, it requires that their visa application forms must be signed by a person exercising parental authority or legal guardianship. According to the Handbook for the processing of visa applications and the modification of issued visas¹⁷ (hereinafter: **Visa Code Handbook**), consulates must verify that the person applying for the visa on the child's behalf is the parent or legal guardian. The consent of the parental authority or legal guardian should be requested from applicants less than 18 years of age, irrespective of the age of majority in the country of residence. Consulates should also check that the child has not been unlawfully removed from the care of the person legally exercising parental custody over him/her. When it suspects such unlawful removal of the child, the consulate has to make all necessary investigations in order to prevent it.

In practical terms, at EU level **Frontex** in November–December 2010 carried out a joint operation regarding irregular immigration of children (Agelaus 2010). It was conducted at 42 airports across Europe, with the aim of increasing awareness of the phenomenon of irregular migration involving children. In November 2011 a Frontex-led multi-agency cooperation 'Joint Operation Hammer' also put an emphasis on the issue of trafficking in children. Operational guidelines were drafted in this regard. The guidelines underline that the best interests of the child must be always a primary consideration and that the principle of *non-refoulement* shall be respected. They contain a non-exhaustive list of indicators of child trafficking and note that if there are any indications that the child could be at risk, border guards should conduct a more specific control (a so-called second-line check). The guidelines also contain useful tips on how to communicate with children. In 2011 Frontex also developed an anti-trafficking training package for border guards: the training manual contains sections addressing the specific situation and needs of children.

3.2. Legislation and practices at national level

As far as national law and practices are concerned, there are very few concrete requirements concerning children crossing the borders.

One common instrument for safeguarding them is the **requirement of parental consent**. In most Member States, the consent is established already at the passport application phase. Certain Member States¹⁸ require written authorisation from or the application filled out by one parent/legal guardian. Other Member States¹⁹ require written authorisation from both parents. Certain Member States²⁰ require one parent to be present with the child during the application process, while in other Member States²¹ - in principle - both parents must be present.

Moreover, especially in case of suspicion, border guards in most Member States in line with Annex VII of the Schengen Borders Code, reserve the right to ask for supporting documents in order to determine the relationship between the child and the accompanying adult(s). In practice this is usually a **parental authorisation** stating the consent of the parent(s) for the

¹⁶ OJ L 243, 15.9.2009, p. 1

¹⁷ Commission Decision C(2010) 1620 final of 19.3.2010 establishing the Handbook for the processing of visa applications and the modification of issued visas

¹⁸ E.g.: Czech Republic, Estonia, Latvia, Austria, Portugal, Romania, Slovenia, United Kingdom

¹⁹ E.g.: Denmark, Greece, Ireland, Malta, Netherlands, Poland, Finland, Sweden

²⁰ E.g.: Belgium, Germany, Spain, Lithuania, Slovakia

²¹ E.g.: Bulgaria, France, Italy

child to leave/enter the country. There are differences in the approaches whether this authorisation is required from Union citizens²², own nationals²³ or from third-country national children²⁴. For own nationals, in a few Member States certain authorities are designated to issue the authorisation, while most Member States do not have a specific issuing authority or template for parental authorisation. Rules and practices also differ regarding the need for authentication and/or translation of the authorisation.

Under certain circumstances, a useful method to ensure that the child is travelling with the right authority from his/her legal guardian(s) is **checking custody arrangements** at the border. In many Member States, information on custody arrangements is rather difficult for border guards to obtain, especially at short notice. While border guards in some of the Member States²⁵ have direct access to national databases or population registers, in other Member States²⁶ they need to go through municipalities and local courts to obtain the information.

According to EU legislation on carriers' liability, in particular Directive 2001/51 of 28 June 2001²⁷, carriers have to ensure that passengers travelling from third countries are in possession of the necessary travel documents for entry into the territory of the Member States. In this context, **carriers** can play a role in checking the child's identity and his/her relationship with the accompanying adults. The study showed that carriers only pay specific attention to children travelling alone while children travelling with one parent receive much less attention. Children travelling alone by air seem most "protected", as the airlines follow the International Air Transport Association's (IATA) guidelines²⁸ for handling of children travelling alone and most airlines have in place so-called Unaccompanied Minors Services. For children travelling via sea or land there are more diversified procedures. The degree of cooperation between border guards and carriers also differs between countries. While in some Member States active and formalised cooperation exists between air carriers and border guards, for example in detecting suspicious situations, this is by far not always the case.

While the requirements regarding parental authorisation vary, Member States employ rather similar **practices** in order **to identify a possible situation of risk** (e.g. possible abduction or trafficking). It is very much a question of individual assessment of the situation and the meeting between the border guard and the child, that determines whether the border guard's suspicion is raised or not. Among others, the following factors could potentially raise their suspicion, or at least induce them to routinely follow up the passport check with a few inquiries: - the different surnames or the dissimilar appearance of the child and the accompanying adult; - the behaviour of the child and the interaction between the child and the accompanying adult; - the country of departure or destination, e.g. countries associated with known trafficking routes.

The study showed that in the decisions of border guards, the safety of the child usually prevails over the need to travel, as any cases raising the slightest suspicion are usually taken to second-line checks. However, few statistics exist concerning children detected to be at risk at the borders (or on the border crossings by children in general).

²² E.g.: Italy, Poland, Portugal

²³ E.g.: Bulgaria, Lithuania, Romania

²⁴ E.g.: Belgium, Spain, France, Cyprus, Latvia, Malta, Portugal

²⁵ E.g.: Germany, Estonia, Latvia, Netherlands, Finland, Sweden

²⁶ E.g.: Czech Republic, Malta

²⁷ OJ L 187, 10.07.2001, p. 45

²⁸ Recommended Best Practice for Minors, IATA/CAWG, 41st meeting, 16-17 May 2007, Tokyo

The practices employed by the border guards seem to be based on a mixture of professional training, guidelines, experience and common sense. Although specific training programmes do exist in some of the Member States²⁹ and in many other Member States border guards receive some training in safeguarding children, the study revealed that there was often relatively little attention paid to the topic.

There are also concrete **alerts** in place that can raise the border guards' attention and lead to further actions. Apart from the national databases at their disposal, the Schengen countries all use the Schengen Information System of the second generation (SIS II) as their main source of information on children that have been reported missing or on specific alerts on the accompanying adult. In these cases, border guards can contact the so-called SIRENE bureaux in the child's country of origin. Moreover, they can also contact the national contact points for minors (Annex 37 of the Border Guards Handbook) and Europol and INTERPOL databases, which contain information on for example criminals and missing persons, as well as victims of child exploitation.

Once a risk situation is identified by the border guards, their procedures of **national coordination (referral) mechanisms** seem to differ from one Member State to another. In a few Member States³⁰, such referral mechanisms are very clearly specified and followed, while in others they are rather based on *ad hoc* decisions. The border guards usually have knowledge of which social services they can contact, but there are not always concrete descriptions of when they need to be contacted and what the process is, especially under particular circumstances (e.g. detection of a situation of risk during early or late hours).

4. GOOD PRACTICES

Some good practices have been identified in order to provide a better protection for children:

- Providing specialised training for border guards on safeguarding children; in a few Member States airline ground and cabin crew also receive such training;
- At major border crossing points having a border guard with special training in dealing with children on duty in every shift;
- Well-established collaboration between border guards and check-in staff at major airports;
- Where parental authorisation is required, in suspicious cases, verification of the documents' authenticity by contacting the (other) parent(s) and asking control questions to establish that they are who they claim to be;
- For children below a certain age, it is considered safer to be subject to border check carried out by border guards as opposed to automatic border check;
- Direct access by border guards to national population registers;

²⁹ E.g.: the UK stands out with child specific trainings which are supported by the UK Border Agency's "Code of Practice for Keeping Children Safe from Harm"

³⁰ E.g.: Bulgaria, United Kingdom

- Establishing clear referral mechanisms as to which authorities and when to contact them in an alert situation.

5. CONCLUSIONS

5.1. 'One person-one passport'

The implementation of the 'one person-one passport' principle does not seem to pose problems. Practitioners and stakeholders consider that it has made travelling of children safer and the border crossings faster, insofar as it is now possible for the border guards to actually identify the child as being the person on the passport, which was difficult when the child was travelling with a family passport.

Already during the discussions on the Passport Regulation the question was raised whether the **inclusion of the name(s) of the legal guardian(s) in the passports of children** would provide an added value. It could potentially make border crossings easier (for both travellers and border guards) in cases where a parent and child travelling together have different surnames. On the other hand, such an initiative may in fact induce a need for further documentation, when adults, other than the parents/legal guardians inscribed in the passport are travelling with the child. There would be additional administrative burden related to the fact that the child's passport would have to be renewed in cases of changes in custody arrangements, parents changing their names (e.g. re-marrying). So far, the Commission does not have sufficient justification for saying that such an initiative would help identify victims of child trafficking and/or abduction, and therefore that EU action would be needed in this regard. The Commission stands ready to further discuss the pros and cons with Member States and stakeholders. In any case, nothing prevents the Member States from introducing the inclusion of parents'/legal guardians' names in children's passports.

Due to the scope of the Regulation, the 'one person-one passport' principle applies for citizens of the States forming part of the Schengen area. The Schengen Borders Code does not oblige **third country national children** to possess their own, individual passport when entering or leaving the Schengen area. As far as third-country national children under visa obligation are concerned, the Schengen visa seems to provide similar "protection" as the 'one person-one passport' principle as it contains an up-to-date photo of the child, even if he/she is included in the passport of his/her parent, i.e. even in case of family passport, separate visas with individual photos are issued to (each of) the parents(s) and to (each of) the child(ren). Moreover during the visa procedure the consulates must verify that the person(s) applying for the visa on the child's behalf is/are the parent(s) or legal guardian(s). However, this kind of "protection" does not extend to third-country national children who do not need a visa. Nevertheless the 'one person-one passport' principle as a recommended ICAO standard is already in place in most of the visa-free countries. Therefore, the Commission does not see the need to require third country national children to hold their own individual passport.

5.2. Legislation and practices at EU level

Certain stakeholders consider that **more detailed guidelines** and best practice examples could facilitate the work at the border crossing points. On the other hand, it would be difficult to capture in formal rules and procedures the range of situations faced by the border guards.

The Commission has proposed amendments to the Schengen Borders Code³¹ requiring the common core curricula for border guards to include specialised training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking. The amendments will also require that the list of national contact points for consultation purposes on minors (currently established on a voluntary basis) should be formally established and its use made obligatory where there is doubt as to any of the circumstances related to minors, whether travelling accompanied or unaccompanied.

Given the wide variety of cases involving border checks on children, the Commission does not see the necessity to provide further specifications at the level of EU legal acts. At the same time, the Commission stands ready to explore alternative ways to provide further guidance to border guards, be it guidelines, training or other means.

Based on the existing achievements, the experience from the relevant joint operations and in synergy with the on-going work in the Commission to develop specific guidelines for consular services and border guards on the identification of victims of trafficking in human beings, Frontex is encouraged to raise further awareness on the issues related to border crossings of children in the form of improving the Common Core Curriculum³² and/or developing a specific training module and/or guidelines and/or workshops. Member States are equally encouraged to put more emphasis on this issue in the training of their border guards.

The safety of the children seems to be of utmost importance for the border guards: in cases raising the slightest suspicion they are usually taken to a more specific control. The Commission will nevertheless consider adjusting the Practical Handbook for Border Guards and the Visa Code Handbook and clearly spelling out that the child's best interests must be a primary consideration.

5.3. Legislation and practices at national level

The national legislation and practices regarding **parental authorisation** are rather diverse in the Member States. At the same time, despite the limited harmonisation in the area, the practices employed by the border guards with respect to controls of children are relatively similar.

It is not possible to conclude whether children are better protected in the Member States where a parental authorisation form is requested at the border as a general rule. Some practitioners point out that parental authorisation forms are easy to forge, others consider the authorisation as an unnecessary additional complication in particular when parental consent is also required for obtaining the passport. However, several stakeholders are in favour of the development of a standardised parental consent form for travels in and out of the Schengen area (Frontex) or internationally (ICAO). Indeed, the harmonisation would make it easier for travellers to know what is required in terms of parental authorisation/consent at the border from the accompanying adult and from children travelling alone. Therefore, the Commission and Member States should follow the discussions on the possible development of a model

³¹ COM(2011) 118 final

³² Article 5 of Council Regulation(EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

form "Consent to travel" which was put forward by the Permanent Bureau of the Hague Conference on Private International Law³³ and may be further considered by the ICAO.

Due to the different provisions of the Member States particularly regarding the need for a parental authorisation at the border, **providing reliable information to the public** seems to be crucial. While information on passport and visa requirements is readily available to travellers in several languages, it seems to be very difficult to find concrete information on the necessity of supporting documents such as parental authorisation. The information is often only available in the language of the Member State and where it exists, it is difficult to locate or even contradicts other sources of information. The official EU website, the Europa Portal does not provide any particular information on this subject either. The European Judicial Network in civil and commercial matters has embarked on the preparation of a fact sheet on the civil law aspects of the lawful removal of children to another State. The fact sheet will be based on inputs of the Member States and will be made available on the European e-Justice Portal³⁴. Furthermore, the Commission is ready to upgrade its europa.eu/travel site on the basis of the inputs of the Member States. Member States should also considerably improve the quality of information distributed to the public on the requirements for children crossing borders.

When border guards identify a possible situation of risk, their procedures and knowledge of available **national coordination mechanisms** seem to differ from one Member State to another. There seem to be only a few Member States where clear national coordination mechanisms exist. Therefore, Member States are encouraged to develop appropriate national coordination mechanisms and to inform the border crossing points about these mechanisms so that border guards know whom to contact, in which situation and what the responsibilities between the different actors are. Particular attention should be paid to the difficulties faced by the border guards in balancing between the protection of the interests of the child and the potential hindrance to their journey. The work already done in the field of trafficking in human beings could be used as inspiration for the development of such referral mechanisms.

Finally, **little statistical data** exist concerning children detected to be at risk at the borders (or on border crossing by children in general) as well as concerning child trafficking and abduction. In order to be able to develop more evidence-based policy options in the area, Member States and Frontex are encouraged to improve the collection of data and statistics on children crossing borders.

³³ <http://www.hcch.net/upload/wop/abduct2012pd15e.pdf>

³⁴ <https://e-justice.europa.eu/home.do>