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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Frontiers
Subject:	Proposal for a Council Regulation on identity cards and residence documents

Delegations will find attached the presentation made by the Commission at the meeting of the Working Party on Frontiers of 12 September 2024 on the above-mentioned subject.



Proposal for a Council Regulation on identity cards and residence documents

COM(2024) 316 final

*Working Party on Frontiers,
12 September 2024*

Background (1/2)

- **Regulation (EU) 2019/1157**

- Entry into force in August 2019, in application since August 2021
- Adopted by the Council and European Parliament on the basis of Article 21(2) TFEU
- Covers identity cards issued by MS to their nationals, as well as residence documents issued to EU citizens and their family members pursuant to the Free Movement Directive 2004/38/EC
- For identity cards and residence cards – mandatory inclusion of two fingerprints like in passports and residence permits
- Declared invalid by the Court of Justice in C-61/22, *Landesgericht Wiesbaden*, due to it having been adopted on incorrect legal basis

Background (2/2)

- **Judgment in *Landesgericht Wiesbaden***
 - the mandatory inclusion of fingerprints in identity cards provided for by Regulation (EU) 2019/1157 is **compatible with the fundamental rights to respect for private life and to protection of personal data**
 - Regulation (EU) 2019/1157 is however invalid because it was adopted on **an incorrect legal basis** (Article 21(2) TFEU instead of Article 77(3) TFEU) and, as a result, in accordance with the **wrong legislative procedure** (ordinary instead of a special legislative procedure)
 - because of the serious negative consequences of Regulation (EU) 2019/1157 being invalid with immediate effect, the Court **maintained the effects of the Regulation until the entry into force of a new regulation** by 1 January 2027 at the latest.

New COM proposal

- **Purpose:** to set in motion the procedure for a new regulation being adopted on the correct legal basis, Article 77(3) TFEU.
- Proposal **essentially reproduces the text of Regulation (EU) 2019/1157 as adopted by the Parliament and the Council**
- However, COM considered it necessary to **adapt the text** in certain minor aspects (explained later)

Impact of new legal basis (Art. 77(3) TFEU)

- **Special legislative procedure:** unanimity in the Council and EP consultation
- **Opt-out of Denmark and Ireland** from measures adopted pursuant to Title V of Part Three of the TFEU applies (Ireland may decide to opt in)
- COM considers the proposal to be **EEA-relevant** (like Regulation (EU) 2019/1157, already incorporated into the EEA Agreement)
- **COM does not consider that the proposal is a development of the Schengen *acquis*** (in particular, its aim is to facilitate free movement by the nationals of all Member States moving and taking up residence in any Member State, regardless of whether it is part of the Schengen area)

Changes compared to Reg. 2019/1157

- **Citations and recitals:**
 - Legal basis corrected
 - Recitals containing references to past policy documents are streamlined
 - Minor changes to the recitals to take into account DK's and IE's opt-outs
 - Reference to the Court's ruling regarding the compatibility of fingerprints with fundamental rights
 - Reference to case-law on the possibility to attest entitlement to rights by other means (also in Article 25 Free Movement Dir)
 - New EDPS consultation

Changes compared to Reg. 2019/1157

- **Operative part (1/2):**

- “*other official language of the institutions of the Union*” replaced with “*official language of the Union*” as terms mean the same but the latter is less ambiguous
- References to technical specifications on residence permits are updated
- Since no notification pursuant to Art. 5(3)(b) was received, relevant references are removed
- Duplication in the last subparagraph of Article 6 is removed
- Pursuant to Art. 8(2) of Reg. (EU) 2019/1157, certain residence cards already ceased to apply
- Article 11(6) is adapted to provide that **only fingerprints can be accessed exclusively by duly authorised staff of competent national authorities and EU agencies**. The **facial image** stored on the chip may be accessed by private entities (e.g. when showing the identity card to a bank).

Adaptations compared to Reg. 2019/1157

- **Operative part (2/2):**
 - To **reduce reporting obligations** for MS authorities:
 - the obligation to maintain, and communicate annually to the COM, a list of the competent authorities with access to the biometric data stored on the storage medium is removed.
 - the rules on reporting and evaluation are streamlined: instead of evaluating the regulation every six years, a single evaluation would be carried out by COM after six years
 - Given that MS are already applying Regulation (EU) 2019/1157, the new regulation would **start to apply with its entry into force**.

Thank you

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