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Committee on Civil Liberties, Justice and Home Affairs

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AMENDMENTS 31-56

Draft report

(PE390.625v01-00)

Sarah Ludford

Proposal for a regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provision on the organisation of the reception and processing of visa application

Proposal for a regulation (COM(2006)0269 – C6-0166/2006 – 2006/0088(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Sarah Ludford

Amendment 31
RECITAL 5

(5) Other options such as co-location, common application centres and outsourcing should be introduced. An appropriate legal framework for these options should be established, taking into account in particular data protection issues. Under the legal framework established Member States should be free to determine which type of organisational structure they will use in each third country. Details of those structures should be published by the Commission.

(5) Other options such as co-location, common application centres and outsourcing should be introduced. An appropriate legal framework for these options should be established, taking into account in particular data protection issues. ***In order to ensure the integrity of the visa issuing process any activity related to the issuing of visas, including the collection of biometric data, should take place on the premises of a Member State which enjoy diplomatic or consular protection under international law or on European Commission premises recognised by the host state as inviolable.*** Under the legal framework established Member States should be free ***in accordance with the conditions in this Regulation*** to determine which type of organisational structure they will use in each third country. Details of those structures should be published by the Commission ***on a common Schengen visa internet site.***

Or. en

Justification

This amendment replaces Amendment 3 of the draft report.

Given, in particular, the risks for data security and data protection linked to the taking of biometrics but also the fact that the process of visa issuing is and should remain a public task (even if certain aspects are outsourced), several amendments have been tabled to ensure that any activity linked to the issuing of visas takes place in a building enjoying diplomatic or consular protection. It is important that these are Member States' buildings or delegations of the Commission, in order to ensure that Directive 95/46 and Regulation 45/2001 are applicable and that any material is protected, e.g. from seizure.

The idea of establishing a common Schengen visa internet site, www.schengenvisa.eu has been brought forward by Henrik Lax in his draft report on Visa Code and the present rapporteur fully supports it. For reasons of transparency and clarity, it is important that the organisational structures chosen by the Member States be published on the same website.

Amendment by Sarah Ludford

Amendment 32

RECITAL 8

(8) Member States *shall* conclude *contracts* with external service providers *which* should contain provisions on their exact responsibilities, direct and total access to their premises; information of applicants, confidentiality and circumstances, conditions and procedures for suspending or terminating the contract.

(8) *Any contract that a* Member State *concludes* with *an* external service provider should contain provisions on *the provider's* exact responsibilities, direct and total access to *its* premises; information of applicants, confidentiality, *compliance with data protection rules* and circumstances, conditions and procedures for suspending or terminating the contract. *Member States should take appropriate measures to ensure that the contracts with external service providers are enforceable.*

Or. en

Justification

This amendment replaces Amendment 5 of the draft report. The first parts of the amendment are clarifications. The last part adds data protection as an important provision which the contracts with external service providers should contain.

Amendment by Martine Roure

Amendment 33

RECITAL 8 A (new)

(8a) In view of the sensitive character of biometric data, their collection should be outsourced only as a last resort.

Or. fr

Amendment by Sarah Ludford

Amendment 34

RECITAL 11

(11) In order to facilitate the procedure of any subsequent application, it should be possible to copy biometric data from the first application within a period of **48** months *in accordance with* the retention period *laid down in* the VIS Regulation. Once this period of time has elapsed, the biometric identifiers should be captured again.

(11) In order to facilitate the procedure of any subsequent application, it should be possible to copy biometric data from the first application within a period of **59** months *from the start of* the retention period *provided for in Article 23 of* the VIS Regulation. Once this period of time has elapsed, the biometric identifiers should be captured again.

Or. en

Justification

This amendment replaces Amendment 9 of the draft report.

The retention time in the VIS is five years, i.e. 60 months, so a 'reuse' period of 59 months ensures that the data on the applicant is still available. In addition, a longer period in which the biometric data can be reused increases the user-friendliness and reduces the workload of consulates. This is also consistent with the approach of Mr Lax in his report on the future Visa Code.

Amendment by Sarah Ludford

Amendment 35
RECITAL 14

(14) The Commission should present a report on the implementation of this Regulation **two years** after **its** entry into force, covering the implementation of the enrolment of biometric identifiers, the principle of the “first application” and the organisation of the reception and the processing of visa applications.

(14) The Commission should present a report on the implementation of this Regulation **three years** after **the VIS is brought into operation and every four years thereafter**, covering the implementation of the enrolment of biometric identifiers, **the appropriateness of the ICAO standard chosen, compliance with data protection standards, experience with external service providers, including any problems encountered**, the principle of the “first application” and the organisation of the reception and the processing of visa applications **accompanied, where necessary, by appropriate proposals to amend this Regulation. The Commission should transmit the report to the European Parliament and the Council.**

Or. en

Justification

This amendment replaces Amendment 11 of the draft report.

Given the importance and sensitivity of this Regulation (due mainly to the introduction of biometrics in such a huge database), it is essential that the Commission reports regularly, including on outsourcing and the ICAO standards. The reporting periods have been brought into conformity with those agreed in the VIS Regulation.

Amendment by Martine Roure

Amendment 36
RECITAL 14

(14) The Commission should present a report on the implementation of this Regulation two years after its entry into force, covering the implementation of the enrolment of biometric identifiers, the principle of the “first application” and the organisation of the reception and the processing of visa applications.

(14) The Commission should present a report on the implementation of this Regulation two years after its entry into force, covering the implementation of the enrolment of biometric identifiers, ***the assessment of exceptions for biometric identifiers***, the principle of the “first application” and the organisation of the reception and the processing of visa applications, ***particularly the proper functioning of the collection of biometric data by outside services***.

Or. fr

Justification

We have too little information about the ages from which biometric data may be regarded as reliable, and the Commission report should therefore, in particular, consider this issue. The report should also assess whether, in outsourcing the collection of biometric data, European rules on the protection of privacy are being complied with.

Amendment by Sarah Ludford

Amendment 37

ARTICLE 1, POINT 1, POINT (A)
Point II, point 1.2., point (b) (CCI)

"A Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. The relevant provisions of 1.2 (c) and (e) shall apply. The reception and transmission of files and data to the represented consular post shall be carried out respecting the relevant data protection and security rules".

"A Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. The relevant provisions of 1.2 (c) and (e) shall apply. ***Where it receives an application, the representing Member State shall create the application file in the VIS and insert the data referred to in Article 9 of the VIS Regulation. It shall then inform the consular post of the represented Member State of the application and the VIS entry through the VIS communication infrastructure as provided for in Article 16 of the VIS Regulation.*** The reception and transmission of files and data to the represented consular post shall be carried out respecting the relevant data protection and security rules".

Or. en

Justification

This amendment replaces Amendment 15 of the draft report.

The underlying rationale of the idea to roll out the VIS in particular regions is that all consulates of the Member States start using the VIS at the same time. This implies that all consulates have access to the VIS. It seems, therefore, logical that the representing Member State introduces, on behalf of the represented Member State, the basic visa data directly into the VIS. This is the best guarantee for ensuring data security and data protection, in particular as regards the transmission of biometric data. The numbering of VIS articles has been adapted to those in the final version of the Regulation.

Amendment by Sarah Ludford

Amendment 38
ARTICLE 1, POINT 2
Point III, point 1 (CCI)

(2) In Point III, point 1 is replaced by the following:

(2) In Point III, point 1 is replaced by the following:

1.1 Visa application forms-number of application forms

Aliens shall also be required to fill in the uniform visa form. Applications for a uniform visa must be made using the harmonised form a specimen of which is given in Annex 16.

At least one copy of the application form must be filled in so that it may be used during consultation with the central authorities. The Contracting Parties may, insofar as national administrative procedures so require, request several copies of the application.

1.1 Visa application forms-number of application forms

Applicants shall also be required to fill in the uniform visa form. Applications for a uniform visa must be made using the harmonised form a specimen of which is given in Annex 16.

At least one copy of the application form must be filled in so that it may be used during consultation with the central authorities. The Contracting Parties may, insofar as national administrative procedures so require, request several copies of the application.

Or. en

Justification

This amendment replaces Amendment 17 of the draft report.

The word 'aliens' should be replaced by the word 'applicants' throughout the text, since this is the word used and defined in the VIS Regulation.

Amendment by Sarah Ludford

Amendment 39

ARTICLE 1, POINT 2

Point III, point 1.2., point (a) (CCI)

a) Member States shall collect biometric identifiers comprising the facial image and ten fingerprints from the applicant *in accordance with the safeguards* laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

a) Member States shall collect biometric identifiers comprising the facial image and ten fingerprints from the applicant *respecting the rights* laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, *in the Charter of Fundamental Rights of the European Union* and in the United Nations Convention on the Rights of the Child.

At the moment of submission of his/her first visa application each applicant shall be required to appear in person. At that time the following biometric identifiers shall be collected:

- a photograph, scanned or taken at the time of application and
- ten fingerprints taken flat and digitally captured.

For any subsequent application the biometric identifiers shall be copied from the first application, **providing the last entry is not older than 48 months**. After this period a subsequent application is to be considered as a “first application”.

The technical requirements for the photograph and the fingerprints shall be in accordance with the international standards as set out in ICAO document 9303 part 1 (passports) 6th edition.

The biometric identifiers shall be taken by qualified and duly authorised staff of the diplomatic mission or consular post or, under their supervision, of the external service provider referred to in point 1.B.

The data shall be entered in the Visa Information System (VIS) only by duly authorised consular staff **according to Articles 4(1), Article 5 and Article 6(5) and (6)** of the VIS regulation.

At the moment of submission of his/her first visa application each applicant **not subject to any of the exceptions referred to in point (b)** shall be required to appear in person. At that time the following biometric identifiers shall be collected:

- a photograph, scanned or taken at the time of application and
- ten fingerprints taken flat and digitally captured.

For any subsequent application, **within 59 months from the start of the retention period provided for in Article 23 of the VIS Regulation**, the biometric identifiers shall be copied from the first application. After this period a subsequent application is to be considered as a “first application”.

The technical requirements for the photograph and the fingerprints shall be in accordance with the international standards as set out in ICAO document 9303 part 1 (passports) 6th edition.

The biometric identifiers shall be taken by qualified and duly authorised staff of the diplomatic mission or consular post or, under their supervision **and responsibility**, of the external service provider referred to in point 1.B.

The data shall be entered in the Visa Information System (VIS) only by duly authorised consular staff **referred to in Article 4(1), in accordance with Article 5** of the VIS regulation.

Member States shall ensure that full use is made of all search criteria under Article 13 of the VIS Regulation in order to avoid false rejections and identifications.

The collection of biometric identifiers, including their transmission from the service provider to the responsible consular post, shall be supervised in accordance with Articles 41 and 43 of the VIS Regulation and Article 28 of Directive 1995/46.

Or. en

Justification

This amendment replaces Amendment 18 of the draft report.

Although neither the European Convention for the Protection of Human Rights and Fundamental Freedoms nor the United Nations Convention on the Rights of the Child lay down safeguards for the collection of biometrics, they include important human rights which should be respected in the context of this proposal. A reference to the Charter of Fundamental Rights has also been added.

It should be made explicit that not every single applicant needs to appear in person at a consulate but that exceptions are foreseen.

The reference to "the last entry" is misleading and therefore the text has been clarified. For the extension of the period regarding the frequency of collection of biometric data, see the justification to the amendment on recital 11.

The taking of biometrics by external service providers should meet various conditions and an important one is that the final responsibility lies with the consular missions or diplomatic posts.

Article 5 of the VIS Regulation as the general article dealing with the procedures for entering data on the application is sufficient and therefore the references to the other articles should be deleted.

It is important as a fallback procedure to make clear that visa authorities should use all search keys foreseen in Article 13 of the VIS regulation.

To ensure consistency with the specific rules on data protection as laid down in the VIS Regulation a cross-reference to them seems necessary (see opinion of the Article 29 Working Party, p. 9). The numbering of VIS articles has been adapted to those in the final version of the Regulation

Amendment by Sylvia-Yvonne Kaufmann

Amendment 40
ARTICLE 1, POINT 2

Point III, Point 1.2, Point (b) (CCI)

(b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

- Children under the age of **6**;

- Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

(b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

- Children under the age of **14**;
- **Persons over the age of 79**;

- Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

Member States shall ensure that appropriate procedures guaranteeing the dignity of the person concerned are in place in the event of there being difficulties in enrolling. They shall also ensure that the decision as to whether fingerprinting is impossible is always taken by duly authorised staff of the diplomatic mission or consular post of the Member States. The fact that fingerprinting is physically impossible shall not influence the decision on whether to grant or refuse a visa.

The Commission shall submit a report on this, indicating the proportion of visa refusals in the case of people who either cannot have their fingerprints taken (for factual reasons) or do not have to have them taken (for legal reasons) in comparison with people who have their fingerprints taken. If appropriate, the report shall also include suitable proposals for amending this Regulation.

Or. de

Justification

On the first three sentences, see the justification of rapporteur Ludford for Amendment 19.

On the fourth and fifth sentences: statistics on rejection rates are needed in order to ascertain whether the physical impossibility of giving fingerprints really does not affect the granting or refusal of a visa.

Amendment by Sarah Ludford

Amendment 41

ARTICLE 1, POINT 2

Point III, point 1.2., point (b) (CCI)

b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

- Children under the age of **6**;

- Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

- Children under the age of **14**;
- ***Persons over the age of 79***;

- Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

Member States shall ensure that appropriate procedures guaranteeing the dignity of the person concerned are in place in the event of there being difficulties in enrolling. They shall also ensure that the decision as to whether fingerprinting is impossible is always taken by duly authorised staff of the diplomatic mission or consular post of the Member State(s). Furthermore, should the impossibility be temporary, the applicant shall be required to give fingerprints at the following application. Consular staff shall be entitled to ask for further clarification on the reasons for the temporary impossibility.

The fact that fingerprinting is physically impossible shall not automatically lead to the refusal of a visa.

A Member State may provide for exceptions from the requirement of collecting biometric identifiers for holders of diplomatic passports, service/official passports and special passports.

In each of these cases an entry “not applicable” shall be introduced in the VIS.

Without prejudice to the provisions of part III.4 of the CCI, for persons under the age of 14 and over 79, scanned photographs shall be used which do not require them to appear in person.

The exemption from the requirement to provide fingerprints for children and the elderly, and in particular the age range for the taking of fingerprints, shall be reviewed three years after the start of operation of the VIS. To this end the Commission shall present a report which shall in particular cover the experience of the VIS with regard to the taking and use of fingerprints from children from 14 years old and a detailed technical assessment of the reliability of taking and using fingerprints of children below this age for identification and verification purposes in a large-scale database like the VIS. The report should also make a similar assessment as regards the taking of fingerprints from persons over the age of 79, and shall incorporate an extended impact assessment of lower and higher age limits for requiring fingerprints, including social, ergonomic and financial aspects. The report shall be accompanied where necessary by suitable proposals to amend this Regulation.

Or. en

Justification

This amendment replaces Amendment 19 of the draft report.

The rapporteur proposes to fix the age limits between 14 and 79 but to have a review clause.

There are various arguments to postpone the obligation for giving fingerprints of children below 14 years:

There are no large-scale experiments with the use of fingerprints of children younger than 14, which is the age limit currently applied for Eurodac and US-Visit. This proposal was not accompanied by any in-depth technical analysis concerning the use of fingerprints of children. In the absence of an impact assessment, it seems too risky to take fingerprints of young children

from the start in such a completely new and large-scale database, with the possibility of error which would discredit the entire system. A more prudent approach is to start less ambitiously and to make an evaluation before taking further steps.

The compromise in the VIS Regulation provides for a transition period of up to three years before a check of fingerprints at the border becomes mandatory, so this is a reasonable model for a transitional approach also on ages for fingerprinting.

The rapporteur believes that persons over 79 are very unlikely to be an immigration or terrorism risk. It seems disproportionate to burden them with the obligation to travel to a consulate and possibly queue several times outside. Without the obligation to provide fingerprints they could use traditional methods, such as a travel agency. In addition, the accuracy of fingerprints decreases as people grow older, so they might encounter unjustified problems at the consulate or at the border. It is also much more difficult for old people to give fingerprints if they are trembling or do not understand the technology. The rapporteur would not want to give the image to the outside world of not respecting older people.

The amendment establishes fallback procedures, as recommended by the EDPS (p. 6 of his opinion) and the Article 29 Working Party (p. 7 of their opinion) and to address the case in which an external service provider would need to make an assessment as to whether fingerprints are usable. Since there is a degree of discretion the final decision should be taken by a public official and not an employee of a private company. It could be feared that an inability to enrol could more easily lead to the refusal of a visa. Therefore, as recommended by the EDPS (p. 6 of his opinion), a provision should be added to avoid such situations. A procedure has been introduced for the cases of temporary impossibility of providing fingerprints.

In order to avoid that children and persons over 79 exempted from provision of fingerprints are nonetheless obliged to appear in person at a consulate only for the taking of a picture, scanned photographs should be used. This is, however, without prejudice to Part III.4 of the CCI, which provides for a personal interview with the applicant if justified for other reasons.

The rapporteur proposes to review the age limits laid down in this Regulation three years after the start of operation of the VIS. Lower age limits could then be decided upon if clear evidence demonstrates necessity and proportionality.

Amendment by Martine Roure

Amendment 42
ARTICLE 1, POINT 2
Part III, point 1.2 (b) (CCI)

(b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

- Children under the age of **6**,

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(b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

- Children under the age of **12**,

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- Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

A Member State may provide for exceptions from the requirement of collecting biometric identifiers for holders of diplomatic passports, service/official passports and special passports.

In each of these cases an entry “not applicable” shall be introduced in the VIS.

- Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

A Member State may provide for exceptions from the requirement of collecting biometric identifiers for holders of diplomatic passports, service/official passports and special passports.

In each of these cases an entry “not applicable” shall be introduced in the VIS.

The exemption from the requirement to provide fingerprints for children shall be reviewed three years after the start of operation of the VIS. To this end the Commission shall present a report which shall in particular cover the experience of the VIS with regard to the taking and use of fingerprints from children and a detailed technical assessment of the reliability of taking and using fingerprints of children below this age for identification and verification purposes in a large-scale database like the VIS. The report shall incorporate an extended impact assessment of lower age limits for requiring fingerprints, including social, ergonomic and financial aspects.

The report should also make a similar assessment as regards the taking of fingerprints from the elderly. Should the report show significant problems with taking fingerprints of persons over a certain age, the Commission shall make a proposal to impose a higher age limit. The report shall be accompanied where necessary by suitable proposals to amend this Regulation.

Or. xm

Justification

Current experience shows that, below the age of 12, biometric data are not reliable. A lower age limit of 12 should therefore be set for the collection of biometric data. Within three years of the entry into force of the VIS, an impact assessment will be carried out to assess the implications of collecting biometric data from children. The impact assessment will also look at the collection of data from the elderly. If the impact assessment shows that problems exist with regard to the collection of data from children and/or the elderly, it will make proposals for revising the present regulation.

Amendment by Martine Roure

Amendment 43
ARTICLE 1, POINT 3
Part VII, point 1.A (CCI)

1 A Organisation of the reception and processing of visa applications

Each Member State shall be responsible for organising the reception and processing of visa applications.

For each location Member States shall either equip their consular office with the required material for capturing/collecting biometric identifiers or without prejudice to the above mentioned options of representation, decide to cooperate with one or more other Member States. Any cooperation shall take the form of co-location or the establishment of a Common Application Centre ***or co-operation with external service providers.***

(a) Where “co-location” is chosen, staff from the diplomatic posts and consular missions of one or more Member States process the applications (including biometric identifiers) addressed to them at the diplomatic post and consular mission of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration and conditions for the termination of the co-location as well as the part of the administrative fee to be received by the Member State whose diplomatic post or consular mission is being used.

1 A Organisation of the reception and processing of visa applications

Each Member State shall be responsible for organising the reception and processing of visa applications.

For each location Member States shall either equip their consular office with the required material for capturing/collecting biometric identifiers or without prejudice to the above mentioned options of representation, decide to cooperate with one or more other Member States. Any cooperation shall take the form of co-location or the establishment of a Common Application Centre.

(a) Where “co-location” is chosen, staff from the diplomatic posts and consular missions of one or more Member States process the applications (including biometric identifiers) addressed to them at the diplomatic post and consular mission of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration and conditions for the termination of the co-location as well as the part of the administrative fee to be received by the Member State whose diplomatic post or consular mission is being used.

(b) Where “Common Application Centres” are established, staff of diplomatic posts and consular missions of two or more Member States are pooled in one building in order to receive the visa applications (including biometric identifiers) addressed to them. Applicants shall be directed to the Member State responsible for the processing of the visa application. Member States shall agree on the duration and conditions for the termination of this co-operation as well as the cost sharing among the participating Member States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.

(c) Co-operation with external service providers in accordance with 1.B

(b) Where “Common Application Centres” are established, staff of diplomatic posts and consular missions of two or more Member States are pooled in one building in order to receive the visa applications (including biometric identifiers) addressed to them. Applicants shall be directed to the Member State responsible for the processing of the visa application. Member States shall agree on the duration and conditions for the termination of this co-operation as well as the cost sharing among the participating Member States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.

Or. fr

Justification

Reception and processing of visa applications should be outsourced only as a last resort. This is stated in Section 1.B., and it is therefore not necessary to state it in this paragraph.

Amendment by Sarah Ludford

Amendment 44
ARTICLE 1, POINT 3
Point VII, point 1 B (CCI)

Where for reasons relating to the local situation of the consular post it is not appropriate to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre, a Member State or several Member States jointly may cooperate with an external service provider for the reception of visa applications (including biometric identifiers). In such a case, the Member State(s) concerned shall remain liable for compliance with data protection rules for the processing of visa applications.

If, due to particular circumstances, such as the reception of a very high number of visa applications or reasons relating to the local situation of the consular post, it is not appropriate to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre a Member State or several Member States jointly may cooperate with an external service provider for the reception of visa applications (including biometric identifiers). In such a case, the Member State(s) concerned shall remain ***responsible for the processing of data and therefore liable for any breaches of the contract and in particular for*** compliance with data protection rules for the processing of visa applications. ***The Member State(s) shall ensure that an external service provider under 1.B.1b undertakes its activities on the premises of a Member State which enjoy diplomatic or consular protection under international law or on European Commission premises recognised by the host state as inviolable and that qualified and duly authorised staff of the diplomatic mission or consular post of the Member State(s) are present to closely supervise the activities of the external service providers.***

Or. en

Justification

This amendment replaces Amendment 23 of the draft report.

The rapporteur proposes that, in the case of outsourcing, consular officials are present to supervise the service provider, as is strongly recommended by the Article 29 Working Party (p. 10 of their opinion). Their presence safeguards the public nature of the visa issuing process. Given the fact that outsourcing already considerably reduces the workload for consulates this obligation should not be seen as an additional burden for Member States. Furthermore, it has been clarified that in the case of outsourcing, the final responsibility for the processing of data and for any breaches of the contract lies with Member States.

Amendment by Martine Roure

Amendment 45
ARTICLE 1, POINT 3
Part VII, point 1.B (CCI)

1 .B Co-operation with external service providers

Where for reasons relating to the local situation of the consular post it is not appropriate to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre, a Member State or several Member States jointly may co-operate with an external service provider for the reception of visa applications (including biometric identifiers). In such a case, the Member State(s) concerned shall remain liable for compliance with data protection rules for the processing of visa applications.

1. B Co-operation with external service providers

Where for reasons relating to the local situation of the consular post it is not appropriate to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre, a Member State or several Member States jointly may co-operate with an external service provider for the reception of visa applications (including biometric identifiers). ***The collection of biometric identifiers may be outsourced only as a last resort.*** In such a case, the Member State(s) concerned shall remain liable for compliance with data protection rules ***in the collection of data, particularly biometric data,*** for the processing of visa applications.

Or. fr

Justification

Collection of biometric data should be outsourced only as a last resort. In view of their sensitive nature, the Member State should also be responsible for collecting them and not only for processing visa applications.

Amendment by Martine Roure

Amendment 46
ARTICLE 1, POINT 3

Part VII, point 1.B.1 (CCI)

1.B.1 - Types of co-operation with external service providers

Cooperation with external service providers shall take [one of] the following form[s]:

(a) the external service provider acts as a call-centre providing general information on the requirements for applying for a visa and in charge of the appointment system;

(b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12) and transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application.

1.B.1 - Types of co-operation with external service providers

Cooperation with external service providers shall take [one of] the following form[s]:

(a) the external service provider acts as a call-centre providing general information on the requirements for applying for a visa and in charge of the appointment system;

(b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data, ***if the latter cannot be collected by consular offices, and as a last resort***, from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12) and transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application

Or. fr

Justification

Collection of biometric data should be outsourced only as a last resort. In view of their sensitive nature, the Member State should also be responsible for collecting them and not only for processing visa applications.

Amendment by Sarah Ludford

Amendment 47

ARTICLE 1, POINT 3

Point VII, point 1.B.1 point (b) (CCI)

b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12) **and** transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application.

b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12), transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application **and returns the passport to the applicant or to a legal representative at the end of the procedure.**

Or. en

Justification

This amendment replaces Amendment 24 of the draft report.

Amendment by Sarah Ludford

Amendment 48

ARTICLE 1, POINT 3

Point VII, point 1.B.2 (CCI)

1.B.2 - Obligations of Member States

The Member State(s) concerned shall select an external service provider **who** is able to ensure all the technical and organisational security measures **and appropriate technical and organizational measures requested by the Member State(s)** to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the reception and transmission of files and data to the consular post, and against all other unlawful forms of processing.

1.B.2 - Obligations of Member States

The Member State(s) concerned shall select an external service provider **which** is able to ensure **a high quality of service and** all the technical and organisational security measures **necessary** to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the reception and transmission of files and data to the consular post, and against all other unlawful forms of processing.

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts) and shall ensure there is no conflict of interests.

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts.

The Member State(s) concerned shall conclude a contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall ***within local consular cooperation inform*** the diplomatic missions and consular posts of other Member States and the Commission delegation ***why the contract is necessary***.

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

a) define the exact responsibilities of the service provider;

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts) and shall ensure there is no conflict of interests.

Member States' diplomatic missions or consular posts must ensure that the company selected is a reputable one, offering an adequate level of real understanding and practice of information assurance and data security. Member States should follow best procurement practices in contracting external visa support services.

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts ***solely for the purposes laid down in the VIS Regulation***.

The Member State(s) concerned shall conclude a ***written*** contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall ***justify, with reasons, the need for the contract to*** the diplomatic missions and consular posts of other Member States and the Commission delegation ***within local consular cooperation***.

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

a) define the exact responsibilities of the service provider;

b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;

c) require the service provider to provide the applicants with the information required under Regulation [draft VIS regulation];

d) provide for access by consular staff to the premises of the service provider at all times;

e) require the service provider to observe rules of confidentiality (***including the protection of the data collected in relation to visa applications;***

b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;

c) require the service provider to provide the applicants with the information required under ***Article 37 of the draft Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas;***

ca) require the service provider to ensure that its staff are appropriately trained and respects the rules laid down in Article 1 (1 a);

cb) require the service provider to adopt appropriate anti-corruption measures;

cc) require the service provider to report to the responsible Member State without delay any security breaches or any other problems;

cd) require the service provider to record any complaints or notifications from applicants on data misuse or unauthorised access. The external service provider shall inform the responsible Member State diplomatic mission or consular post without delay and coordinate with them in order to find a solution. The complaints should be handled in such a way so as to ensure that explanatory responses are given to visa applicants promptly.

d) provide for access by consular staff to the premises of the service provider at all times;

e) require the service provider ***and its staff*** to observe rules of confidentiality ***which shall also apply once the staff have left the employ of the external service provider or after the suspension or termination of the contract;***

ea) ensure data protection compliance, including reporting obligations, external audits, regular spot checks by, inter alia, national data protection authorities and that mechanisms are in place for the apportionment of liability of a contractor in the event of a breach of the regulations on privacy, including the obligation to compensate individuals where they have suffered damage resulting from an act or omission of the service provider;

eb) require the service provider to transmit without delay the completed file to the diplomatic mission or consular post of the Member State responsible for the processing of the application and not to copy, store, or otherwise retain any data collected after the transmission;

ec) require the service provider to prevent any unauthorised reading, copying, modification or deletion of visa data during the transmission from the service provider to the diplomatic mission or consular post of the Member State responsible for the processing of the application, in particular by means of appropriate encryption techniques.

f) contain a suspension and termination clause.

f) contain a suspension and termination clause.

fa) contain a revision clause with a view to ensuring that contracts reflect best current practices.

A model contract shall be established within local consular cooperation.

Member States shall ensure that there is the least possible disruption of service for visa applicants in the event of the external service provider suddenly ceasing to provide the services required under the contract.

The Member State(s) concerned shall monitor implementation of the contract, including:

The Member State(s) concerned shall *ensure practices of close cooperation with the external service provider and shall closely monitor the* implementation of the contract, including:

- a) the general information provided by the service provider to visa applicants;
- b) the technical and organisational security measures and appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing as well as the reception and transmission of files and data to the consular post;
- c) the capturing of biometric identifiers;
- d) the measures taken to ensure compliance with data protection provisions.

The total amount of fees charged by the external service provider for processing the visa application shall not exceed the fee set out in annex 12.

The consular staff of the Member State(s) concerned shall give training to the service provider, corresponding to the knowledge needed to offer appropriate service and sufficient information to visa applicants.

- a) the general information provided by the service provider to visa applicants;
- b) the technical and organisational security measures and appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing as well as the reception and transmission of files and data to the ***diplomatic mission*** or consular post;
- c) the capturing ***and transmission*** of biometric identifiers;
- d) the measures taken to ensure compliance with data protection ***and data security*** provisions ***as well as against corruption***.

The total amount of fees charged by the external service provider for processing the visa application shall not exceed the fee set out in annex 12.

Member States shall ensure that a procedure is in place allowing for the identification of the external service provider involved in any visa application.

The consular staff of the Member State(s) concerned shall give training to the service provider, corresponding to the knowledge needed to offer appropriate service and sufficient information to visa applicants.

Or. en

Justification

This amendment replaces Amendment 25 of the draft report.

A provision on the quality of service is added since visa applicants should receive a high-quality service. An external service provider will, in many cases, be the first image of the EU encountered by applicants and should therefore also fulfil certain quality standards. The deletion clarifies the text.

To avoid any misunderstanding, it should be explicitly stated that access to the VIS can take place only for the purposes mentioned in the VIS Regulation.

The Member States should justify why outsourcing is necessary.

A series of clauses have been added regarding the scope of contracts with external service providers. The specifications enumerated in point (ea) are proposed by the EDPS (p. 7 of his opinion) and those mentioned in point (eb) are proposed by the Article 29 Working Party (p. 10 of their opinion). Most of the other specifications are based on a recent UK independent report on the breach of data security in the VFS online UK visa application facility, operated through VFS websites in India, Nigeria and Russia. Member States may add further requirements if they deem them necessary. It is important that a model contract established by Member States in order to harmonise Member States' practices to the fullest extent possible and facilitate cooperation.

It is essential that the implementation of the contract with external service providers be closely monitored, including matters such as transmission of biometric identifiers to the responsible Member State and measures taken to ensure data security and prevent corruption.

As suggested also by the Article 29 Working Party (p. 10 of their opinion), it is important that all external service providers can be identified for reasons of transparency and accountability.

Amendment by Martine Roure

Amendment 49

ARTICLE 1, POINT 3

Part VII, point 1.B.2 (CCI)

1.B.2 - Obligations of Member States

The Member State(s) concerned shall select an external service provider who is able to ensure all the technical and organisational security measures and appropriate technical and organizational measures requested by the Member State(s) to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the reception and transmission of files and data to the consular post, and against all other unlawful forms of processing.

1.B.2 - Obligations of Member States

In compliance with Directive 95/46/EC, the Member State(s) concerned shall select an external service provider who is able to ensure all the technical and organisational security measures and appropriate technical and organizational measures requested by the Member State(s) to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the reception and transmission of files and data to the consular post, and against all other unlawful forms of processing.

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts and shall ensure there is no conflict of interests.

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts.

The Member State(s) concerned shall conclude a contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall within local consular cooperation inform the diplomatic missions and consular posts of other Member States and the Commission delegation why the contract is necessary.

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

- (a) define the exact responsibilities of the service provider;
- (b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;
- (c) require the service provider to provide the applicants with the information required under Regulation [draft VIS regulation];
- (d) provide for access by consular staff to the premises of the service provider at all times;

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts and shall ensure there is no conflict of interests.

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts.

The Member State(s) concerned shall conclude a contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall within local consular cooperation inform the diplomatic missions and consular posts of other Member States and the Commission delegation why the contract is necessary.

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

- (a) define the exact responsibilities of the service provider;
- (b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;
- (c) require the service provider to provide the applicants with the information required under Regulation [draft VIS regulation];
- (d) provide for access by consular staff to the premises of the service provider at all times;

(e) require the service provider to observe rules of confidentiality (including the protection of the data collected in relation to visa applications;

(f) contain a suspension and termination clause.

(e) require the service provider to observe rules of confidentiality (including the protection of the data collected in relation to visa applications;

(f) contain a suspension and termination clause;

(fa) lay down that biometric data shall not be stored by the service provider but regularly sent to the appropriate consular staff in order to ensure that they are secure;

(fb) lay down rules on the conduct of the staff responsible for collecting biometric data, with maximum respect for human dignity. Any measure taken when carrying out these duties must be proportionate to the aims of this measure. In processing the application, staff shall avoid any discrimination among persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Or. fr

Justification

In view of the sensitive character of biometric data, they may be stored only by the consular services of the Member States, in order to ensure that they are secure.

Rules should be laid down concerning the conduct of staff responsible for collecting biometric data (in accordance with border codes).

Amendment by Sarah Ludford

Amendment 50

ARTICLE 1, POINT 3

Point VII, point 1.B.5 (CCI)

1.B.5 - Information

1.B.5 - Information

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Precise information on the means of obtaining an appointment and submitting a visa application shall be displayed by Member States' diplomatic missions and consular posts for the general public.

Member States and their diplomatic missions or consular posts shall provide the general public with all relevant information in relation to a visa application :

(a) the criteria, conditions and procedures for applying for a visa;

(b) the means of obtaining an appointment, if applicable;

(c) where the application should be submitted (competent diplomatic mission or consular post, common application centre or external service provider).

This information to the general public shall also be available through the common Schengen visa internet site provided for in point VII, point 1.B.5.

Or. en

Justification

This amendment replaces Amendment 26 of the draft report.

This is copied from Article 41(1) of the Visa Code proposal which is much better than the present text. Since the present text will probably enter into force before the new Visa Code enters into force, it is important to incorporate in the present text those provisions judged indispensable for the functioning of the VIS. For the reference to the Schengen visa internet site, see the justification to the amendment on ARTICLE 1, POINT 3, Point VII, point 1.B.5 new (CCI).

Amendment by Sarah Ludford

Amendment 51
ARTICLE 1, POINT 3
Point VII, point 1.B.5 new (CCI)

A common Schengen visa internet site shall be established in order to further support the application of the common visa policy. The Schengen visa internet site shall support the handling of the visa procedure.

Or. en

Justification

The idea of establishing a common Schengen visa internet site, www.schengenvisa.eu has been brought forward by Henrik Lax in his draft report on Visa Code and the present rapporteur fully supports it. Since the present text will probably enter into force before the new Visa Code enters into force, it is important to incorporate this provision here.

Amendment by Sarah Ludford

Amendment 52

ARTICLE 1, POINT 3

Point VII, point 1.D, paragraph 1 (CCI)

Member States shall inform the Commission of how they intend to organise the reception and processing of visa applications in each consular location. The Commission will ensure appropriate publication.

Member States shall inform the Commission of how they intend to organise the reception and processing of visa applications in each consular location. The Commission will ensure appropriate publication ***on the common Schengen visa internet site.***

Or. en

Justification

This amendment replaces Amendment 28 of the draft report. See the justification to the amendment on recital 5.

Amendment by Sarah Ludford

Amendment 53

ARTICLE 1, POINT 3

Point VII, point 1.E (new) (CCI)

1.E General responsibilities

1.E.1 Documents

Any document, data or biometric identifier received by, or on behalf of, a Member State in the course of a visa application shall be considered a 'consular document' under the Vienna Convention on Consular Relations and shall be treated in an appropriate manner.

1.E.2 Training

Before being authorised to take biometric identifiers, the staff of the diplomatic mission or consular point shall receive appropriate training so as to ensure smooth and professional enrolment.

1.E.3 Liability

Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act in breach of this Regulation shall be entitled to receive compensation from the Member State which is responsible for the damage suffered. That Member State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.

Claims for compensation against a Member State for the damage referred to in the previous subparagraph shall be governed by the provisions of national law of the defendant Member State.

1.E.4 Penalties

Member States shall take the necessary measures to ensure that any breach of this Regulation, in particular any misuse of data submitted for a visa application is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Or. en

Justification

This amendment replaces Amendment 29 of the draft report.

A new part is added with general responsibilities for Member States which seem indispensable for the functioning of the VIS. A provision on the status of documents, data and biometric identifiers is important in order to ensure that they will benefit from consular protection. A provision on training is necessary, given the specific expertise the enrolment of biometrics requires. Rules on liability and penalties are necessary in view of potential damage resulting from acts violating this Regulation. The wording has been clarified to bring it into conformity with the wording in the VIS Regulation.

Amendment by Sylvia-Yvonne Kaufmann

Amendment 54
ARTICLE 1 NUMMER POINT 3
Part VII Point 1.E (new) (CCI)

Liability

Any person who, or Member State which, has suffered damage as a result of any act incompatible with this Regulation shall be entitled to claim compensation from the Member State which is liable. The Member State shall also be liable as referred to here if the damage has been caused by an act in violation of this Regulation performed by an external service provider with whom the Member State is cooperating.

Or. de

Justification

It must be made clear that the Member State is still liable even if the damage has been caused not by the Member State itself but by the external service provider to which it has entrusted tasks connected with the issuing of visas. The Member State thus bears liability despite not having caused the damage. However, this is justified because the State is transferring to a private party its own sovereign responsibilities (namely the issuing of visas and all the preparatory steps leading thereto). In terms of liability, such a transfer must not be to the detriment of the injured party (whether a person or a State).

Amendment by Sylvia-Yvonne Kaufmann

Amendment 55

ARTICLE 2

The Commission shall present a report to the European Parliament and to the Council on the implementation of the present regulation *two years after its entry into force.*

The Commission shall present *two years after the entry into force of this regulation and every two years thereafter* a report to the European Parliament and to the Council on the implementation of the present regulation *including the implementation of the enrolment of biometric identifiers, the appropriateness of the ICAO standard chosen including in terms of data protection, experiences with external service providers, including any problems encountered, the principle of the “first application” and the organisation of the reception and the processing of visa applications. The report shall also contain statistics on the proportion of visa refusals in the case of people who, for factual or legal reasons, either cannot have their fingerprints taken or do not have to have them taken. The report shall be accompanied, where necessary, by appropriate proposals to modify this Regulation.*

Or. de

Justification

On the first and third sentences, see the justification of rapporteur Ludford for Amendment 30.

On the second sentence, see the justification concerning Article 1 (2) Part III Point 1.2 B, 1st subparagraph.

Amendment by Sarah Ludford

Amendment 56

ARTICLE 2

The Commission shall present a report to the European Parliament and to the Council on the implementation of the present regulation *two years after its entry into force.*

The Commission shall present, *three years after the VIS is brought into operation and every four years thereafter*, a report to the European Parliament and to the Council on the implementation of the present regulation *including the implementation of the enrolment of biometric identifiers, the appropriateness of the ICAO standard chosen, compliance with data protection standards, experiences with external service providers, including any problems encountered, the principle of the “first application” and the organisation of the reception and the processing of visa applications. The report shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.*

Or. en

Justification

This amendment replaces Amendment 30 of the draft report. See the justification to the amendment on recital 14.