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'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	15391/15 + ADD 1
Subject:	Draft Regulation of the European Parliament and of the Council on a European travel document for the return of illegally staying third-country nationals (first reading) - Confirmation of the final compromise text with a view to agreement

1. By a letter received on 16 December 2015, the Commission submitted a proposal for a Regulation of the European Parliament and of the Council on a European travel document for the return of illegally staying third-country nationals.
2. After examination of the proposal by the JHA Counsellors and by the Integration, Migration and Expulsion Working Party, the Permanent Representatives Committee gave a mandate to the Presidency on 23 March 2016¹ to enter into negotiation with the European Parliament.
3. On 30 May 2016, the EP LIBE Committee adopted its report on the proposal, and decided to open interinstitutional negotiations on the basis of that report.
4. As a result of the informal trilogue held on 23 June 2016, the European Parliament and the Council reached an agreement on the compromise text as set out in Annex to this Note.

¹ Doc 7172/16.

5. The JHA Counsellors considered the compromise text, as set out in Annex to this Note, during their meeting on 27 June 2016.
 6. The European Parliament intends to adopt its position at first reading during the plenary session of 12-15 September 2016.
 3. The Permanent Representatives Committee is therefore invited:
 - to confirm the final compromise text, as contained in Annex to this Note;
 - to authorise the Presidency to send a letter to the Chair of the European Parliament's LIBE Committee confirming that, should the European Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, in the form set out in the final compromise text contained in the Annex to this note, subject to the revision by the lawyer-linguists of both institutions, the Council would, in accordance with Article 294(4) TFEU, approve the European Parliament's position and the act shall be adopted in that wording.
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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (EU)

2016/...

of ...

**on a European travel document for the return of illegally staying third-country nationals, and
repealing Council Recommendation of 30 November 1994**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure²,

² ***Position of the European Parliament of ... [(OJ ...)] [(not yet published in the Official Journal)] and decision of the Council of***

Whereas:

- (1) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in full respect of fundamental rights, in particular of the principle of *non-refoulement*, and in compliance with the provisions of Directive 2008/115/EC *of the European Parliament and of the Council*³, is an essential part of the comprehensive efforts to ensure the credibility and *the proper and effective* functioning of the Union migration *policy* and to reduce and deter irregular migration.
- (2) National authorities of the Member States experience difficulties in returning illegally staying third-country nationals who possess no valid travel documents. *Member States should make efforts to ensure the effective use of the European travel document for return.*
- (3) Improving cooperation on return and readmission with the main countries of origin and transit of illegally staying third-country nationals is essential for increasing rates of return, which are unsatisfactory. *An improved European travel document for the return of third-country nationals is relevant in this regard.*

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

- (4) The current standard travel document for the *return* of third-country nationals, established by Council Recommendation of 30 November 1994⁴, is not widely accepted by authorities of third countries, for reasons including its inadequate security standards.
- (5) It is therefore necessary to promote the acceptance by third countries of an improved *and uniform* European return *document* as the reference document for return purposes.
- (6) A more secure *and uniform* European travel document for the return of third-country nationals should be established to facilitate return and readmission of ■ third-country nationals *staying illegally on the territory of the Member States*. Its enhanced security features *and technical specifications* should facilitate its recognition by third countries. Such document should help carry out returns in the context of readmission agreements or other arrangements *concluded by the Union or the Member States* with third countries, as well as in the context of return-related co-operation with third countries not covered by formal agreements.

⁴ Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals (OJ C 274, 19.6.1996, p. 18).

- (7) *The readmission of own nationals is an obligation under international customary law with which all States are required to comply. Cooperation on the identification of illegally staying third-country nationals and the issuance of documents including the European travel document for return should, where appropriate, be subject of cooperation with diplomatic representations and negotiations with third countries entering into readmission agreements, either with the Union or the Member States.*
- (8) Readmission agreements concluded by the Union with third countries should seek the recognition of the European travel document for return. Member States should seek the recognition of the European travel document for return in bilateral agreements and other arrangements as well as in the context of return-related co-operation with third countries not covered by formal agreements.
- (9) The European travel document for return should help reduce the administrative and bureaucratic burden on Member States' and third countries' administrations, including consular services, and it should contribute to reducing the length of the administrative procedures necessary for ensuring return and readmission of illegally staying third-country nationals.
- (10) This Regulation should only harmonise the format , *security features* and technical specifications of a European travel document for return and should not harmonise rules on the issuing of such document.

■

- (11) The content and technical specifications of the European travel document for return should be harmonised in order to ensure high technical and security standards, in particular as regards safeguards against counterfeiting and falsification. The document should bear recognisable harmonised security features. High technical and security standards already exist and are set according to **■** Council Regulation (EC) No **1683/95**⁵, which should therefore be applied to the European travel document for return.
- (12) In order to amend **■** certain non-essential elements of the model for a European travel document for return, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (**TFEU**) should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level ***and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016***⁶. ***In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.***

■

⁵ ***Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).***

⁶ ***OJ L 123, 12.5.2016, p. 1.***

- (13) With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC *of the European Parliament and of the Council*⁷.
- (14) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty on the European Union (*TEU*) and to the *TFEU*, Denmark is not taking part in the adoption of this Regulation and is not bound by or subject to its application. Given that this Regulation builds – to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council⁸ – upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

⁸ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

- (15) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EC) No 562/2006, this Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC⁹; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Moreover, in accordance with Articles 1 and 2 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the *TEU* and to the *TFEU*, and without prejudice to *Article 4* of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by or subject to its application.
- (16) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EC) No 562/2006, this Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁰; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. **Moreover, in** accordance with Articles 1 and 2 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the *TEU* and to the *TFEU*, and without prejudice to *Article 4* of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by or subject to its application.

⁹ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

¹⁰ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

- (17) As regards Iceland and Norway, this Regulation constitutes – to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EC) No 562/2006 – a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*¹¹, which fall within the area referred to in Article 1 of Council Decision 1999/437/EC¹².
- (18) As regards Switzerland, this Regulation constitutes – to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EC) No 562/2006 – a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹³, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁴.

¹¹ OJ L 176, 10.7.1999, p. 36.

¹² ***Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis*** (OJ L 176, 10.7.1999, p. 31).

¹³ OJ L 53, 27.2.2008, p. 52.

¹⁴ ***Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis*** (OJ L 53, 27.2.2008, p. 1).

- (19) As regards Liechtenstein, this Regulation constitutes – to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EC) No 562/2006 – a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁵, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁶.
- (20) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the effects of the envisaged action, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the *TEU*. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (21) In order to establish uniform conditions and ensure clarity of concepts, it is appropriate to adopt this act in the form of a Regulation.

¹⁵ OJ L 160, 18.6.2011, p. 21.

¹⁶ ***Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).***

(22) *Member States should respect their respective obligations under international and EU law, notably the Charter of Fundamental Rights of the European Union, in particular the protection in the event of removal, expulsion or extradition provided for in its Article 19, and the duty referred to in its Article 24(2).*

(23) **█** Council Recommendation of 30 November 1994 *should therefore be repealed,*

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes the format, *the security features* and the technical specifications of a *uniform* European travel document for the return of third-country nationals.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (1) 'third-country national' means third-country nationals as defined in point (1) of Article 3 of Directive 2008/115/EC of the European Parliament and of the Council¹⁷;
- (2) 'return' means return as defined in point (3) of Article 3 of Directive 2008/115/EC;
- (3) 'return decision' means return decision as defined in point (4) of Article 3 of Directive 2008/115/EC.

¹⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

Article 3

European travel document for return

1. The format of the European travel document for return shall correspond to the model set in the Annex. It shall contain the following information **■** :
 - (a) the name, surname, date of birth, sex, nationality, distinguishing marks and, if known, the address in the third country of return of the third-country national;
 - (b) a photograph;
 - (c) the issuing authority, date of issue and period of validity;
 - (d) information about departure and arrival.**
2. The European travel document for return shall be established in **an** official language or languages of the Member State that issues the return decision and, where appropriate, **■** shall be translated into English and French.
3. The document shall be valid for a single journey **up until** the **arrival in the** third country of return **of the third country national subject to a return decision issued by a Member State.**
4. Where **applicable**, additional documents necessary for the return of third-country nationals may be attached to the European travel document for return.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 6 in order to amend the format of the European travel document for return.

Article 4
Technical specifications

1. The security features and technical specifications of the European travel document for return shall be those set in application of **■** Council Regulation (EC) No **1683/95** **and take account of any relevant developments thereof.**
2. Member States shall forward to the Commission and to the other Member States a specimen of the European travel document for return drawn up in accordance with this Regulation.

Article 5
Issuing fees

The European travel document for return shall be issued free of charge for the third-country national.

Article 6
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3(5) shall be conferred on the Commission for an indeterminate period of time from [*insert date entry into force*].

3. The delegation of power referred to in Article 3(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. ***Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.***
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 3(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 7

Repeal ■

Council Recommendation of 30 November 1994 *is repealed*.

Article 8
Review and reporting

The Commission shall review and report on the effective implementation of this Regulation no later than 24 months after its entry into force, after which the review of this Regulation will be incorporated into the assessment as laid down in Article 19 of Directive 2008/115/EC.

Article 9
Entry into force

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*. ***It shall apply four months after the date of its entry into force.***

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President



Name of the Member State

European travel document for the return of illegally staying third-country nationals

Issuing authority:

Document No:

Valid for one journey from:

to:

Name(s):

Surname(s):

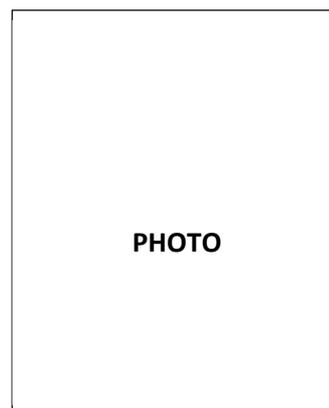
Date of birth:

Sex:

Nationality(-ies):

Distinguishing marks:

Address in the country of return (if known):

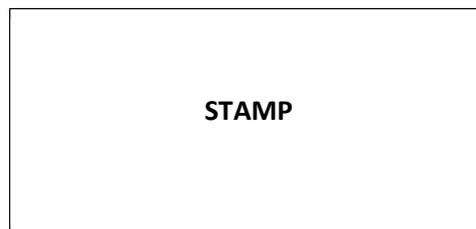


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Issued at:

Date:

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