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NOTE

From: Presidency
To: Working Party on Frontiers

Subject: Proposal for a Regulation of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement

Delegations will find attached compromise proposals by the Presidency, which will be discussed at the Working Party on Frontiers on 16 July 2018.

Changes vis-à-vis the original Commission proposal are highlighted in **bold** and ~~strikethrough~~.

Changes to the last Presidency compromise proposal, set out in 10317/18, are marked in **bold underline** and ~~strikethrough underline~~.

2018/0104 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on strengthening the security of identity cards of Union citizens and of residence documents
issued to Union citizens and their family members exercising their right of free movement**

(Text with EEA relevance)

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 21(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The EU Treaties resolved to facilitate the free movement of persons while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of the Treaty on the Functioning of the European Union.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) Citizenship of the Union confers on every citizen of the Union the right to free movement subject to certain limitations and conditions. Directive 2004/38/EC of the European Parliament and of the Council gives effect to that right.³ Article 45 of the Charter also provides for the freedom of movement and residence. Freedom of movement entails the right to exit and enter Member States with a valid identity card or passport.
- (3) Pursuant to Article 4 of Directive 2004/38/EC, Member States are to issue and renew identity cards or passports to their nationals in accordance with national laws. Furthermore, Article 8 of Directive 2004/38/EC provides that they may require citizens of the Union and their family members to register with the relevant authorities. Member States are required to issue registration certificates to Union citizens under the conditions set out therein. Member States are also required to issue residence cards to family members who are not nationals of a Member State and, on application, to issue documents certifying permanent residence and permanent residence cards.
- (4) Article 35 of Directive 2004/38/EC provides that Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud. Document forgery or false presentation of a material fact concerning the conditions attached to the right of residence have been identified as typical cases of fraud under the Directive⁴.
- (5) The 2016 Action Plan on document security of December addressed the risk from fraudulent identity cards and residence documents⁵, and the 2017 Citizenship report committed to analysing policy options to improve the security of identity cards and residence documents.
- (6) This Regulation does not require Member States to introduce identity cards or residence documents where they are not provided for under national law, nor does it affect the competence of the Member States to issue other residence documents under national law outside the scope of Union law, for example residence cards delivered to all residents on the territory whatever their nationality.
- (7) This Regulation does not affect the use of identity cards and residence documents with eID function by Member States for other purposes nor does it affect the rules laid down in Regulation (EU) No 910/2014 of the European Parliament and of the Council,⁶ which provides for Union-wide mutual recognition of electronic identifications in access to public services and helps citizens moving to another Member State by requiring electronic identification means to be recognised in another Member State. Improved identity cards should ensure easier identification and contribute to a better access to services.

³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

⁴ COM (2013) 837 final of 25.11.2013, p. 7 and COM (2009) 313 final of 2.7.2009, p. 15.

⁵ COM(2016) 790 final.

⁶ Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (8) Proper verification of identity cards and residence documents requires that Member States use the correct title for each kind of document. In order to facilitate checking of the documents in other Member States, the document title should also appear in at least one other official language of the institutions of the Union.
- (9) Security features are necessary to verify if a document is authentic and to establish the identity of a person. The establishment of minimum security standards and the integration of biometric data in identity cards and in residence cards of family members who are not nationals of a Member State is an important step to render their use in the Union more secure. The inclusion of such biometric identifiers should allow citizens to fully benefit from their free movement rights.
- (10) The specifications of the International Civil Aviation Organisation (ICAO) Document 9303 (seventh edition, 2015) on machine-readable documents which ensure global interoperability including for machine readability and using visual inspection should be taken into account for the purpose of this Regulation.
- (11) The procedure for taking fingerprints and a facial image should take into account the specific needs of children and be applied in accordance with the safeguards laid down in Article 24 the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.
- (12) Introducing minimum security and format standards of identity cards should allow Member States to rely on the authenticity of those documents when EU citizens exercise their free movement rights. While the possibility to provide for additional national features is maintained, it should be ensured that those features do not diminish the efficiency of the common security features or negatively affect the cross-border interoperability of the identity cards, such as the possibility that the identity cards can be read by machines used by Member States other than those of issue.
- (13) The Regulation shall respect the obligations set in the United Nations Convention on the Rights of Persons with Disabilities ratified by all Member States and the Union⁷. Therefore, the integration of additional features that render identity cards more accessible and user-friendly to people with disabilities, such as visually impaired persons, should be encouraged.
- (14) Residence documents issued to citizens of the Union should include certain information to ensure that they are identified as such in all Member States. This should facilitate the recognition of the EU mobile citizen's use of the right to free movement and of the rights inherent to this use, but harmonisation should not go beyond what is appropriate to address the weaknesses of current documents.

⁷ OJ L 23, 26.11.2009

- (15) As regards residence documents issued to family members who are not nationals of a Member State it is appropriate to make use of the same format and security features as provided for in Council Regulation (EC) No 1030/2002⁸ which lays down a uniform format for residence permits for third-country nationals as last amended by Regulation (EU) 2017/1954⁹. In addition to a prove of the right of residence they also exempt their holders who are otherwise subject to a visa obligation from the need to obtain a visa when accompanying or joining the citizen of the Union within the Union territory.
- (16) Article 10 of Directive 2004/38/EC provides that documents issued to family members who are not nationals of a Member State are to be called "Residence card of a family member of a Union citizen".
- (17) Identity cards as well as residence cards of a family member of a Union citizen with insufficient security standards should be phased out taking into account both the security risk and the costs incurred by Member States. In general, a period of five years should be sufficient to strike a balance between the frequency with which documents are usually replaced and the need to fill the existing security gap within the European Union. However, for cards which do not have important features, in particular machine readability, a shorter period of two years is necessary on security grounds.
- (18) With regard to the personal data to be processed in the context of the application of this Regulation, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)¹⁰ applies. It is necessary to further specify safeguards applicable to the processed personal data. Data subjects should be made well aware of the existence in their documents of the storage medium containing their biometric data including its contactless accessibility as well as of all instances where the data contained in their identity cards and residence documents are used. In any case, data subjects should have access to personal data processed in their identity cards and residence documents and have them rectified.
- (19) It is necessary to specify in this Regulation the basis for the collection and storage of data on the storage medium of identity cards and residence documents. In accordance with their national legislation or Union law, Member States may store other data on a storage medium for electronic services or other purposes relating to the identity card or residence document. The processing of such data including their collection and the purposes for which they can be used should be authorised by national or Union law. All national data should be physically or logically separated from biometric data referred to in this Regulation.

⁸ Council Regulation (EC) 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1.

⁹ OJ L 286 of 1.11.2017, p.9.

¹⁰ OJ L 119, 4.5.2016, p. 1.

- (20) Member States should apply this Regulation at the latest 12 months after its entry into force. As from the date of application of this Regulation, Member States should issue documents respecting the requirements set out in this Regulation.
- (21) The Commission should report on the implementation of this Regulation after three years after its date of application, including on the appropriateness of the level of security. In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making¹¹ the Commission should carry out an evaluation of this Regulation on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Regulation and the need for any further action.
- (22) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.
- (23) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union including the respect for private and family life, the right to the protection of personal data, the right to free movement and the right to an effective remedy.

¹¹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation strengthens the security standards applicable to identity cards issued by Member States to their nationals and to residence documents issued by Member States to Union citizens and their family members when exercising their right to free movement.

Article 2

Scope

This Regulation applies to:

- (a) identity cards delivered by Member States to their own nationals as referred in Article 4 (3) of Directive 2004/38/EC **with a validity of more than three months**;
- (b) registration certificates issued to Union citizens residing for more than three months in a host Member State in accordance with Article 8 of Directive 2004/38/EC and documents certifying permanent residence issued to Union citizens upon application in accordance with Article 19 of Directive 2004/38/EC;
- (c) residence cards issued to family members of Union citizens who are not nationals of a Member State in accordance with Article 10 of Directive 2004/38/EC and permanent residence cards issued to family members of Union citizens who are not nationals of a Member State in accordance with Article 20 of Directive 2004/38/EC.

CHAPTER II

NATIONAL IDENTITY CARDS

Article 3

Security standards/format/specifications

- (1) Identity cards issued by Member States shall be produced in ID-1 format and shall comply with the minimum security standards set out in ICAO Document 9303 (seventh edition, 2015). **The card shall be made entirely of polycarbonate or equivalent synthetic polymer (lasting for at least 10 years).**¹²
- (2) The document title ('Identity card') shall appear in the official language or languages of the issuing Member State ~~and~~ **or** at least one other official language of the institutions of the Union.
- (3) Identity cards shall include a highly secure storage medium which shall contain a facial image of the holder of the card and two fingerprints in interoperable **digital** formats.
- (4) The storage medium shall have sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data. The data stored shall be accessible contactless and secured as provided for ~~in the Commission Implementing Decisions adopted in accordance with Article 2 of Regulation (EC) 1030/2002 in the Commission Decision C(2002) 3069 of 14 August 2002 establishing technical specifications for the implementation of the uniform format for residence permits for third country nationals as last amended by Commission Decision C(2013) 6178 of 30.9.2013.~~
- (5) Children under the age of 12 years**~~The following persons shall~~ may be exempt from the requirement to give fingerprints:
 - ~~(a) — children under the age of 12 years;~~

~~p~~**Persons whose fingerprinting is physically impossible shall be exempt.**
- (5a) Where fingerprinting of the designated fingers is temporarily impossible, Member States shall allow the fingerprinting of the other fingers. Where it is also temporarily impossible to take fingerprints of any of the other fingers, they may issue an identity card having a validity of three months or less.**
- (5) Member States may enter details and observations for national use as required in the light of their national provisions.
- (6) Where Member States incorporate a dual interface or a separate storage medium in the identity card, the additional storage medium shall comply with the relevant ISO standards and not interfere with the storage medium referred to in paragraph 3.

¹² A recital will be added to address the quality of the document and the personalisation technique.

- (7) Where Member States store data for electronic services such as e-government and e-business in the identity cards, the national data shall be physically or logically separated from the biometric data referred to in paragraph 3.
- (8) Where Member States add national security features to the identity cards, the cross-border ~~interoperability~~ **compatibility** of the identity cards and the efficiency of the minimum security standards shall not be diminished.
- (9) Identity cards shall have a maximum period of validity of 10 years. **Member States may issue identity cards with longer validity** ~~Derogations may be provided for persons beyond a certain age limit provided by national laws~~ ~~specific age groups~~.

Article 4

Collection of biometric identifiers

- (1) The biometric identifiers shall be collected by qualified and duly authorised staff designated by the national authorities responsible for issuing identity cards.
- (2) Where difficulties are encountered in the collection of biometric identifiers, Member States shall ensure that appropriate procedures are in place to guarantee the dignity of the person concerned.

Article 5

Phasing out

Identity cards which do not meet the requirements of Article 3 shall cease to be valid at their expiry or by ~~five~~ **ten** years after [*the date of application of the Regulation*], whichever is earlier. However, identity cards which do not include a functional machine-readable zone (MRZ) compliant with ICAO document 9303 part 3 (seventh edition, 2015) shall cease to be valid at their expiry or by **three** ~~two~~ years after [*the date of application of this Regulation*], whichever is earlier.

CHAPTER III

RESIDENCE DOCUMENTS FOR UNION CITIZENS

Article 6

Minimum information to be indicated¹³

Residence documents issued by Member States to citizens of the Union shall indicate at least the following:

- (a) the title of the document in the official language or languages of the Member State concerned and at least one other official language of the institutions of the Union;
- (b) the clear reference that the document is issued in accordance with Directive 2004/38/EC;
- (c) document number;
- (d) name (surname and forename(s)) of the holder;
- (e) date of birth of the holder;
- (ea) on registration certificates issued in accordance with Article 8 of Directive 2004/38/EC, the date of the registration and the address of the holder;**
- (eb) on documents certifying permanent residence issued in accordance with Article 19 of Directive 2004/38/EC, the date of issue;**
- ~~(f) date of issue;~~
- ~~(g) place of issuing authority.~~

¹³ A recital will be added inviting to use ICAO security standards.

CHAPTER IV

RESIDENCE CARDS FOR FAMILY MEMBERS WHO ARE NOT NATIONALS OF A MEMBER STATE

Article 7

Uniform format

- (1) When issuing residence cards to family members of Union citizens who are not nationals of a Member State, Member States shall use the same format as established by the provisions of Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals as last amended by Regulation (EU) 2017/1954, and as implemented by the provisions of the Commission Decision C(2002) 3069 of 14 August 2002 establishing technical specifications for the implementation of the uniform format for residence permits for third country nationals as last amended by Commission Decision C(2013) 6178 of 30.9.2013.
- (2) By derogation from paragraph 1, a card ~~shall indicate clearly that it is issued in accordance with Directive 2004/38/EC and shall bear the title 'Residence card of a family member of a Union citizen' or 'Permanent residence card of a family member of a Union citizen',~~ respectively. **Member States shall indicate that these documents are issued to a family member of a Union citizen in accordance with Directive 2004/38/EC. For this purpose Member States may shall use the standardised code 'Art 10 DIR 2004/38/EC' or 'Art 20 DIR 2004/38/EC', respectively, as referred to in data field [10] in the Annex of Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals as last amended by Regulation (EU) 2017/1954.**
- (3) Member States may enter data for national use in accordance with national law. When entering and storing such data, Member States shall respect the same requirements as set out in Article 4, 2nd subparagraph, of Council Regulation (EC) No 1030/2002 as last amended by Regulation (EU) 2017/1954.

Article 8

Phasing out of existing residence cards

- (4) Residence cards of family members of Union citizens who are not nationals of a Member State, which are not in a format laid down for residence permits in Regulation (EC) No 1030/2002 as amended by Regulation (EC) No 380/2008 of the European Parliament and of the Council on [*the date of entry into force of this Regulation*], shall cease to be valid at their expiry or by [~~two~~ **three** years after the date of application of this Regulation], whichever is earlier.

- (5) Residence cards of family members of Union citizens who are not nationals of a Member State, which are in a format laid down for residence permits for third-country nationals in Regulation (EC) No 1030/2002 as amended by Regulation (EC) No 380/2008, but which are not in a format laid down in Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954 on [*the date of entry into force of this Regulation*], shall cease to be valid at their expiry or by [*five years after the date of application of this Regulation*], whichever is earlier.

CHAPTER V

COMMON PROVISIONS

Article 9

Contact point of contact

- (1) Each Member State shall designate **at least** one **central** authority. **Where a Member State has designated more than one central authority, it shall designate which of them will be the as a contact point of contact** for the implementation of this Regulation. It shall communicate the name of that authority to the Commission and the other Member States. If a Member State changes its designated authority, it shall inform the Commission and the other Member States accordingly.
- (2) Member States shall ensure that the contact points are aware of and able to cooperate with the existing and relevant information and assistance services at Union level, such as Your Europe, SOLVIT, EURES, bodies foreseen under Article 4 of Directive 2014/54/EU, Enterprise Europe Network and the Points of Single Contact.

Article 10

Protection of personal data

- (1) Without prejudice to the application of Regulation (EU) 2016/679, persons to whom an identity card or residence document is issued shall have the right to verify the personal data contained in the documents and, where appropriate, to ask for rectification ~~or erasure~~ **and issuance of a new document**.
- (2) Information in machine-readable form shall only be included in an identity card or residence document in accordance with this Regulation or the national legislation of the issuing Member State.
- (3) Biometric data collected and stored in the storage medium of identity cards and residence documents shall only be used in accordance with Union and national law for verifying:
 - (a) the authenticity of the identity card or residence document;
 - (b) the identity of the holder by means of directly available comparable features when the identity card or residence document is required to be produced by law.

Article 11

Monitoring

By 12 months after the entry into force at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.

Member States shall provide the Commission with the data and other evidence necessary for the monitoring.

Article 12

Reporting and Evaluation

- (1) Four years after its date of application, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Regulation.
- (2) No sooner than six years after the date of application of this Regulation, the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines.
- (3) Member States shall provide the Commission with the information necessary for the preparation of the reports.

Article 12a

Further technical specification

- (1) **In order to ensure, where appropriate, compliance of the identity cards and residence documents referred to in Article 1 with future minimum security standards adopted pursuant to Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third country nationals as last amended by Regulation (EU) 2017/1954 and as implemented by the provision of Commission Decision C(2002)3069 of 14 August 2002 establishing technical specifications for the implementation of the uniform format for residence permits for third country nationals as last amended by Commission Decision C(2013)6178 of 30.9.2013, the Commission shall establish, by means of implementing acts, additional technical specifications, relating to the following:**
 - (a) **additional security features and requirements, including enhanced anti-forgery, counterfeiting and falsification standards;**

- (b) technical specifications for the storage medium of the biometric features and their security, including prevention of unauthorised access and facilitated validation;
- (c) requirements for quality and common technical standards for the facial image and the fingerprints.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 12b(2).

- (2) In accordance with the procedure referred to in Article 12b(2), it may be decided that the specifications referred to in this Article shall be secret and not be published. In that case they shall be made available only to the point of contact referred to in Article 9(1).

Article 12b

Committee procedure

- (1) The Commission shall be assisted by the Committee established by Article 6 of Regulation (EC) No. 1683/95. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
- (2) Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 13

Entry into force

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

It shall apply from ~~12~~ 24 months after its entry into force.

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

Done at Strasbourg,

For the European Parliament

For the Council

The President The President