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Subject:	Draft Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications

The Visa Working Party re-examined Articles 1, 2 and 3 of the annexed Commission's proposal.

The text of the draft Regulation resulting from the meeting is set out in the Annex, with comments by delegations set out in footnotes to the text.

Draft

**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 provisions on the organisation of
the reception and processing of visa applications**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62 (2)
b) ii) thereof,

Having regard to the proposal from the Commission¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

- (1) To ensure reliable verification and identification of visa applicants it is necessary to process biometric data in the VIS established by Council decision 2004/512/EC of 8 June 2004³ and to provide for a legal framework for the capturing of these biometric identifiers. Furthermore, the implementation of the VIS requires new forms of organisation for the reception of applications for visas.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ L 213, 15.6.2004, p.5.

- (2) The integration of biometric identifiers in the VIS is an important step towards the use of new elements, which establish a more reliable link between the visa holder and the passport in order to avoid the use of false identities. Therefore the personal appearance of the visa applicant –at least for the first application- should be one of the basic requirements for issuing a visa with the registration of biometric identifiers in the VIS.
- (3) The choice of the biometric identifiers is made in the *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 visas¹*, hereinafter referred to as "VIS Regulation". This Regulation defines the standards for the collection of these biometric identifiers by referring to the relevant provisions set out by the International Civil Aviation Organisation (ICAO). No further technical specifications are required in order to ensure interoperability.
- (4) In order to facilitate the registration of visa applicants and to reduce the costs for Member States, new organisational possibilities need to be envisaged in addition to the existing framework of representation. Firstly a specific type of representation limited to the reception of visa applications and enrolment of biometric identifiers should be added to the Common Consular Instructions.
- (5) Other options such as co-location, common application centres, honorary consuls and cooperation with external service providers 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.
- (6) When organising co-operation, Member States should ensure that the applicant is directed to the Member State responsible for the processing of his application.

¹ OJ L ..., p.....

- (7) It is necessary to make provisions for situations in which Member States' central authorities decide to, in order to facilitate the procedure, cooperate with an external service provider for the reception of visa applications. Such a decision may be taken if, due to particular local circumstances such as a high number of applications¹, another way of organising the reception of visa applications is not considered appropriate by the Member State concerned. Such arrangements should be established in compliance with the general principles for issuing visas, respecting the data protection requirements set out in 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.
- (8) Member States should cooperate with external service providers on the basis of a legal instrument 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 cooperation.
- (9) To ensure the compliance with data protection the working group created by Article 29 of 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 and the European Data Protection Supervisor have been consulted.
- (10) Member States should be able to allow categories of applicants or all applicants direct access to their consular offices or diplomatic missions.
- (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 54 months for adults and 24 months for children between the age of 6 and 12 years old². Once this period of time has elapsed, the biometric identifiers should be captured again.

¹ Amendment proposed by the Presidency. HU entered a reservation.

² FR entered a reservation.

- (12) Due to the requirement to capture biometric identifiers, commercial intermediaries such as travel agencies should no longer be used for the first application but only for the subsequent ones.
- (13) The Common Consular Instructions on visas for diplomatic missions and consular posts should therefore be amended accordingly.
- (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.
- (15) Since the objectives of this Regulation, namely the organisation of the reception and the processing of visa applications in respect of the insertion of biometric data in the VIS, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing common standards and interoperable biometric identifiers to lay down rules for all Member States implementing the Schengen Convention. This Regulation does not go beyond what is necessary in order to achieve those objectives.
- (16) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation, and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation, whether it will implement it in its national law.

- (17) As regards Iceland and Norway, this Regulation constitutes a development of 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 association of those two States with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement¹.
- (18) 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/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*. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (19) 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/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (20) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 4 (1) of the Council decision on the signing, on behalf of the European Community, and on the provisional application of certain provisions of this Agreement.

¹ OJ L 176, 10.7.1999, p. 31.

- (21) As regards Cyprus, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (22) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAVE ADOPTED THIS REGULATION:

Article 1

The Common Consular Instructions on visas for diplomatic missions and consular posts are amended as follows:

(1) In Point II, point 1.2 is amended as follows:

(a) In (b) the following paragraph is added:

"A Member State may also represent one or more other Member States in a limited manner solely for the reception of applications and the enrolment of biometric identifiers¹. The relevant provisions of 1.2 (c) and (e) shall apply. The reception and transmission of files and data to the represented Member State shall be carried out respecting the relevant data protection and security rules."

(b) Point (d) is replaced by the following:

"When uniform visas are issued pursuant to (a) and (b), the representation shall be reflected in the table of representation for the issuing of uniform visas set out in Annex 18."

¹ **COM** wanted a sentence to be added indicating that the "limited representation" could also be implemented by a non-Schengen State as far as the reception of applications and their transmission to the represented Member State are concerned.

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

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. Member States may, insofar as national administrative procedures so require, request several copies of the application.

1.2. Biometric identifiers

- 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.

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.

Where biometric identifiers collected from the applicant regarding an earlier application were entered for the first time in the VIS:

- less than 24 months before the date of the new application in cases where the applicant was a child from 6 to 12 years of age when the biometric identifiers were entered for the first time, and

- less than 54 months before the date of the new application in cases where the applicant was a person above 12 years of age when the biometric identifiers were entered for the first time, these biometric identifiers shall be copied to the new application. However, in case of serious¹ doubts regarding the identity of the visa applicants, biometric identifiers may exceptionally be collected within the period specified above².

The technical requirements for the photograph shall be in accordance with the international standards as set out in ICAO Doc 9303 part 1 6th edition. The fingerprints shall be taken in accordance with ICAO standards and the Commission Decision 2006/648/EC of 22 September 2006 laying down the technical specifications on the standards for biometric features related to the development of the Visa Information System.

The biometric identifiers shall be taken by qualified and duly authorised staff of the visa authorities. Under supervision of the visa authorities, the biometric identifiers may also be taken by qualified and duly authorized staff of an honorary consul or of an external service provider referred to in point 1.B.

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

¹ **DE** entered a reservation.

² **FR** maintained its reservation because it wants the date of collection of the fingerprints to be also covered by "the serious doubts".

b) Exceptions

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

- Children under the age of 6. The use of fingerprints given by children aged between 6 and 12 at the time of collection is regulated in point ba);
- Persons where fingerprinting is physically impossible. However, should the impossibility be temporary, the applicant shall be required to give the fingerprints at the following application. Visa authorities shall be entitled to ask for further clarification on the grounds of the temporary impossibility. If fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken;
- Heads of state or government and holders of diplomatic passports who accompany them in official delegation when they are invited by Member States' governments or international organisations, when visiting such international organisations.

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

ba) fingerprints given by children aged between 6 and 12 at the time of collection may only be used for verification purposes¹.

¹ **NL, BE, BG, DE, EE** entered a reservation because in their view it should be possible to use the fingerprints of children for identification purposes as well. The **Chair** and **COM** reminded delegations that the European Parliament (EP) is strongly opposed to the taking of fingerprints from children, in particular for identification purposes and has called for concrete figures based on scientific studies from the Member States regarding the reliability of the taking and using of fingerprints of children.

(3) In Point VII, point 1 is replaced by the following text:

I 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 visa authorities with the required material for capturing/collecting biometric identifiers or cooperate with one or more Member States and/or with an external service provider. Member States shall also equip the offices of their honorary consuls whenever they make use of them to collect biometric identifiers.

Except for the payment of the handling fee (as provided for by Part VII, point 4 and Annex 12) and without prejudice to the possibility to call the visa applicant for a personal interview in case of doubt (as provided for by Part III, point 4), the selection of a form of organisation shall not result in the need for the applicant to make personal appearances at more than one location.¹

- a) Where "co-location" is chosen, staff from the diplomatic missions or consular posts of one or more Member States process the applications (including biometric identifiers) addressed to them at the diplomatic mission or consular post 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 mission or consular post is being used.

¹ **DE** entered a reservation. **COM** reminded delegations that the possibility for an interview in case of doubts leaves untouched the one-stop-shop principle as already foreseen in the current CCI provisions.

- b) Where "Common Application Centres" are established, staff of diplomatic missions or consular posts 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) Honorary consuls may also be authorised to perform some or all of the tasks referred to in 1.B.1. Adequate measures should be taken in order to guarantee security and data protection.
- d) Co-operation with external service providers in accordance with 1.B

1.B Co-operation with external service providers¹

Where for reasons relating to the local situation of the consular post a Member State considers it is not appropriate to equip or to sufficiently equip the diplomatic mission, the consular post or the honorary consul for capturing/collecting biometric identifiers or that it is not appropriate to organise or join co-location or a Common Application Centre, a Member State or several Member States 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 Reservation entered by **DE** who called for the introduction of additional security measures in the Annex.

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

Cooperation with external service providers shall only cover some or all of the following tasks:

- a) provision of general information on the requirements for applying for a visa and distribution of forms;
- b) management of an appointment system with the diplomatic mission or consular post or the external service provider;
- c) reception of applications, supporting documents and biometric data and their transmission to the diplomatic mission or consular post and the return of the passport at the end of the procedure;
- d) collection of the handling fee¹.

¹ FI entered a reservation.

1.B.2. Obligations of Member States

The cooperation with an external service provider shall be based on a legal instrument that shall comply with the requirements set out in Annex xy.

The Member State(s) concerned shall provide for the possibility to verify the biometric identifiers at the diplomatic mission or consular post on a random basis or, in cases of doubts where the biometric identifiers have been taken at the external service provider¹.

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

Before taking a decision to cooperate with the external service provider², 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 about such a decision to cooperate.

¹ Reservation entered by **COM** and **IT**.

² **BE** entered a reservation because the condition to inform the other Member States in advance is impossible to apply in cases where a decision on outsourcing has been taken before the entry into force of the Regulation.

The Member State(s) concerned shall monitor implementation of the legal instrument, 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 diplomatic mission or 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 exceed¹ the fee set out in Annex 12².

¹ **EL** and **PL** did not see the purpose of this formulation as the fee set out in Annex 12 was fixed. Responding to a query from **PT**, **COM** noted that there is no link between the negotiation mandates on Community visa facilitation agreements recently agreed upon and outsourcing.

² **FR, IT, ES, DE, BE** and **AT** were opposed to this provision. **IT** and **ES** added that for them in this context there should be no difference between external service providers and tourist agencies. **EL** entered a reservation and asked for clarification about the maximum amount to be paid by the applicant. **NL** stressed the necessity of making a clear distinction between the tasks of the consulate and those of the service provider, and suggested the addition of a point (e) covering issues related to integrity. Moreover, **NL** proposed the text be worded as follows: "An external service provider may charge a service fee (payable in addition to the handling fee set out in Annex 12), provided that the possibility is maintained for the applicant to lodge an application directly at the diplomatic mission or consular post."

COM maintained that if part of Member States' usual tasks were outsourced, the applicant should not be obliged to pay an additional fee, and wondered whether a call centre, where the applicant had to obtain an appointment, could be considered as an additional service. **COM** emphasised that the Community imposed visa requirements on a number of third countries and Member States are obliged to organise the reception of applications properly. Some delegations (**IT, NL, AT, CZ**) noted that the applicant would always be able to submit the application directly at the consular post.

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.

1.B.5 - Information

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.

1.C Maintenance of direct access for applicants to Member States diplomatic missions and consular posts¹

In the case of cooperation with external service providers, Member States shall maintain the possibility for applicants to lodge an application for a visa directly at the premises of its diplomatic mission or consular posts, where they have a visa department, in reasonable time². If the previous condition is fulfilled, the external service provider may charge a service fee (payable in addition to the handling fee set out in Annex 12).

¹ **IT** wanted to maintain the possibility for applicants to have access to consular premises in all cases. **COM** was opposed to the proposal of the Presidency. **SE** entered a reservation on the point. **SI** entered a scrutiny reservation on the new text. **EL** was opposed to an additional fee. **PL** entered comments on visa fees and on external service providers and suggested a new wording.

² **LU** asked what was actually meant by reasonable time. The **Chair** asked delegations a contribution on that point, to be sent by e-mail. **COM** thought "reasonable time" was only a part of the question and called for a drafting along the lines of "identical conditions".

Should Member States decide to cooperate with external service providers, in locations where there is no diplomatic mission or consular post, in order to facilitate access to visa application, the service fee may be charged by the external service provider - at his discretion or if so provided for in the legal instrument referred to in pt 1.B.2, second indent.¹

Irrespective of the type of cooperation chosen Member States may also maintain the possibility of allowing for applicants' direct access to their premises.²

¹ **MT, CY** and **SK** entered a scrutiny reservation on the two first subparagraphs.

² **BE, IT, AT, BG, DE, FR, LT, DK** were of the opinion that this last subparagraph is superfluous.

1.D Decision and 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.

Member States shall provide the Commission with a copy of the legal instrument referred to in point 1.B.2, second indent.

(4) In point VIII, point 5.2 is amended as follows:

a) the title is replaced by the following:

5.2. Member States' diplomatic missions and consular posts' cooperation with commercial intermediaries

b) the following sentence is inserted between the title and point 5.2 (a)¹:

For repeated applications² in the sense of point III 1.2, Member States may allow their diplomatic missions or consular posts to cooperate with commercial intermediaries (i.e. private administrative agencies, transport or travel agencies (tour operators and retailers)).

¹ **ES, BE, IT, AT** entered a reservation.

² **NL** suggested "For subsequent applications...". **FR** wondered whether the applicant should not have the possibility, by crossing a box on the visa application form, to indicate she/he has already given her/his fingerprints

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.

Article 3

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

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX xy

List of minimum requirements to be included in legal instruments in the case of cooperation with external service providers.

In executing its activities the external service provider shall:

A) In relation to the execution of the activities

I. Data protection

- a) refrain from any unauthorised reading, copying, modification or deletion of visa data, in particular during the transmission to the diplomatic mission or consular post of the Member State responsible for the processing of the application. The transmission of the data shall be made at the latest 24 hours after their collection. The only data that may be retained shall be the name and contact of the visa applicant for the purposes of the appointment arrangements;
- b) ensure all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration unauthorised disclosure or access, in particular where the processing involves the transmission of files and data to the diplomatic mission or the consular post and all other unlawful forms of processing;
- c) process the data only for the purposes of processing of personal data of visa applicants on behalf of the Member State concerned;
- d) apply data protection standards at least equivalent to those set out in Directive 95/46;
- e) provide the applicants with the information required under Article 37 of the VIS Regulation;

II. *External Service Provider Staff*

- a) ensure that its staff in the performance of their duties:
 - receive applicants courteously,
 - respect the human dignity and integrity of the applicant,
 - do not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, age or sexual orientation, and
 - respect the rules of confidentiality which will also apply once the staff have left their job or after suspension or termination of a contract;
- b) provide identification of the staff working in the company at all times;
- c) prove that the staff are reliable and have the requisite expertise;

B) In relation to the verification of the execution of the activities

- a) provide for access by staff entitled by the visa authorities to its premises at all times without previous notice, in particular for inspection purposes;
- b) ensure the possibility of remote access to its appointment system for inspection purposes;
- c) ensure the use of monitoring methods (e.g. test applicants; WebCam)¹;
- d) ensure access to proof of data protection compliance, including reporting obligations, external audits, regular spot checks;

¹ Amendment proposed by **DE**.

C) Miscellaneous

- a) act under the instructions of the Member State responsible for the processing of the application;
- b) adopt appropriate anti-corruption measures (e.g. provisions on staff remuneration; cooperation in the selection of staff members employed on the task; two-man-rule; rotation principle)¹;
- c) provide appropriate compensation both to the Member State concerned and the visa applicant where any of points A) c), d) or e) are breached;
- d) prove to be solvent and reliable (including having the necessary licences, commercial registration, company statutes, bank contracts and no conflict of interests);
- e) respect fully the provisions of the legal instrument, which shall contain a suspension or termination clause, in particular in the event of breach of the rules established.

¹ Amendment proposed by **DE**.