



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**VISA 91
COMIX 274**

OUTCOME OF PROCEEDINGS

of: Visa Working Party/Mixed Committee (EU-Iceland/Norway/Switzerland)

dated: 1-2 March 2007

No. prev. doc. 5174/07 VISA 6 COMIX 23

6201/07 VISA 51 COMIX 159

6886/07 VISA 70 COMIX 235

No. Cion prop.: 7298/06 VISA 80 COMIX 267 (COM(2006) 110 final)

Subject: Modified draft Council Regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals

The draft Regulation was examined on the basis of the documents indicated above.

A consolidated version of the text is set out in the Annex to this note based on the Presidency's suggestions contained in 6201/07 and 6886/07. The aim of these suggestions was to amend the draft proposal to take account of the conclusions drawn by the "Article 6 Committee" (examined by SCIFA on 26 February 2007, cf. 6475/07), the question of additional security features. Delegations generally approved the suggested amendments. In addition the following issues were raised:

a) Extension of residence permits

The **Chair** recalled that following the meeting in January, a survey concerning Member States' procedures and practice in relation to the extension of residence permits had been carried out. The following conclusions could be drawn from the replies:

- 16 Member States issue (or are planning to issue) residence permits centrally;
- the procedure for extension took from 2 days to 3 months;
- in 11 Member States the extension took the form of a new card, whereas in 9 Member States either a stamp or a sticker were affixed to the passport, a separate document or a visa were issued;
- in 2 Member States extension was not possible for short stays, whereas extensions for nationals from third countries not subject to visa requirements was not possible in 3 Member States and take the form of a card (5 Member States) or a visa is issued (4 Member States).

On the basis of this the **Chair** asked delegations whether common rules should be drawn up. In the case of an affirmative answer, what should common rules then contain?

UK wondered whether Member States' practices in relation to extension complied with the definition in the 2002 Regulation and also whether the waiver granted in Article 1 (2)(a)(iii) to non-Schengen states could now be amended or even deleted. **COM** noted that Regulation 1030/2002 clearly states that an extension of the residence permit must take the form of a new card, but admitted that with the introduction of biometrics the issuance of cards would be very expensive. **COM** showed openness for other solutions.

Referring to ongoing discussions in the Frontiers Working Party, **BE** was of the opinion that a "light" solution should be found for persons who only need a short prolongation, i.e. persons who need to prove their right of entry elsewhere than where they reside (if they are in the process of extension of a residence permit). Recalling that 16 Member States issue (or are planning to issue) residence permits centrally, which is both costly and time consuming, **DE** wondered whether a different kind of harmonised document should not be drawn up for this purpose.

COM recalled the purpose of the draft Regulation, i.e. to introduce biometrics into residence permits to enhance security and drawing up a harmonised form for the extension of such permits on a simple piece of paper would undermine this objective. **NL** and **EE** shared this point of view. **DE** noted that the purpose of the suggestion was not to contradict the harmonisation, but if extension should be allowed for, such extension should take the same form. In order to solve this matter, the Presidency has suggested that addition of a new Article 1 (1a) and Article 2(1)(g), see pages 9 and 10.

b) Issuance of uniform format for residence permits to family members of EU citizens

Following the opinion of the Council Legal Service¹ in relation to the possibility for using the legal basis of Regulation 1030/2002 for harmonising the format of residence permits for family members of EU citizens, **COM** indicated that the Commission Legal Service maintained its position that TEC Article 18 (3) does not allow for this. However, given the wish of Member States also to enhance security of these documents and harmonise them, **COM** suggested the following solutions:

- **Family members of EU nationals, not beneficiaries of Community law in the sense of Directive 2004/38, Article 3(1):**

These are family members residing together with an EU citizen in the Member State of which the EU citizen has the nationality. As the EU citizen has not exercised his/her right of free movement, he/she and his/her family members are not beneficiaries of Community law in the sense of Article 3 (1) of Directive 2004/38. Consequently those family members are covered by Article 63 (3) of the TEC. In such cases, Member States issue a residence permit in accordance with Regulation (EC) 1030/2002. When travelling, they have to prove their family link with the EU national by a marriage certificate or other documents. In order to facilitate travel for this category of persons, the issuing Member State, after having checked the family link, should enter a remark on the back of the card stating that the person is a family member of an EU citizen, who has not exercised the right of free movement. This entry, establishing the family link should be sufficient for border controls and no supplementary documents should be necessary. **COM** therefore proposed the addition of a new Article 5a to Regulation 1030/2002 (see page 12).

¹ 13148/06 JUR 354 VISA 234 MI 171.

- **Family members of EU citizens having exercised their right of free movement in the sense of Directive 2004/38, Article 3 (1)**

As previously indicated before, the Commission Legal Service is of the opinion that there is no legal basis for harmonising the format of residence permits issued to this category of persons. **COM** suggested as a possible solution to insert an Article similar to Article 7 of Regulation (EC) 1683/95 laying down a uniform format for visas and submitted a proposal for a new Article 5b to Regulation 1030/2002 (see page 13).

Finally, **COM** proposed that in order to ensure a harmonised approach, Member States should commit themselves to use this "uniform format" for residence permits issued to third country nationals being a family member of an EU citizen exercising his/her right of free movement. This document shall be entitled: "Residence card of a family member of a Union citizen" in accordance with Directive 2004/38, Article 10. This commitment could be expressed in the following declaration to be published in the OJ at the time of the publication of the draft Regulation under examination:

"Member States declare that for the purpose of delivering residence permits to family members of EU citizens in accordance with Article 10 of Directive 2004/38, they will use the uniform format for residence permits in accordance with Regulation (EC) 1030/2002 replacing the title by "Residence cards of a family member of a Union citizen"

The representative of the **Council Legal service (CLS)** maintained the CLS opinion, finding that the proposal put forward by the Commission mixed up the substance and the legal basis. **UK** was of the opinion that the Article 18 (3) TEC did not allow for covering this matter, but wondered whether the new Article 5b and the declaration would not be sufficient, as the new Article 5a seemed excessively complicated. **BE** shared the latter point of view.

Modified draft

COUNCIL REGULATION¹

**amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for
third-country nationals**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63 (3)a thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Amsterdam Treaty aims to establish progressively an area of freedom, security and justice and confers the right of initiative to the Commission in order to take the relevant measures on a harmonised immigration policy.
- (2) It is essential that the uniform format for residence permits should contain all the necessary information and meet very high technical standards, in particular as regards safeguards against counterfeiting and falsification; this will contribute to the objective of preventing and fighting against illegal immigration and illegal residence. It must also be suited to use by all the Member States.

¹ UK and NL: parliamentary reservation. IE: scrutiny reservation.

² OJ C , , p. .

- (3) The integration of biometric identifiers is an important step towards the use of new elements, which establish a more reliable link between the holder and the residence permit as an important contribution to ensuring that it is protected against fraudulent use. The specifications set out in the ICAO document No 9303 Part 3 on Size 1 and 2 machine readable official documents should be taken into account.
- (3a) At its meeting in Thessaloniki on 19 and 20 June 2003 the European Council stressed that a coherent approach was needed in the EU on biometric identifiers or biometric data, which would result in harmonised solutions for documents for third country nationals, EU citizens' passports and information systems.
- (4) The use of new technologies such as e-government and digital signature for access to e-services should be facilitated by giving Member States the possibility to use the storage medium used for the incorporation of biometric identifiers or an additional storage medium for that purpose in residence permits.
- (4a) The purpose of this Regulation is solely to approximate the security features and biometric identifiers to be used by the Member States in a uniform format of residence permit for third-country nationals.¹
- (5) This Regulation only lays down such specifications that are not secret; these specifications need to be supplemented by further specifications which may remain secret in order to prevent counterfeiting and falsifications and which may not include personal data or references to such data. Powers to adopt such supplementary specifications should be conferred to the Commission, who shall be assisted by the Committee established by Article 6 of Council Regulation (EC) n°1683/95 of 29 May 1995 laying down a uniform format for visas².

¹ New recital suggested by AT. COM entered a reservation on this amendment.

² OJ L 164, 14.7.1995, p. 1. Regulation as amended by Regulation amending Regulation 1683/95 laying down a uniform format for visas.

- (6) With regard to the personal data to be processed in the context of the uniform format for residence permits, Directive 95/46/EC¹ of the European Parliament and of the Council of 24.10.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data applies, it must be ensured that no further information shall be stored on the uniform format for residence permits unless provided for in the regulation, its annex or unless it is mentioned in the relevant travel document.
- (7) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing biometric identifiers in interoperable formats 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 the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.
- (8) 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 participating in the adoption of this Regulation, and is therefore not bound by it or subject to its application. Given that this Regulation aims to build upon the Schengen *acquis* under the provisions of Title IV of Part three of the Treaty establishing the European Community, Denmark will, 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 transpose it into its national law.
- (9) 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 Agreement².

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 176, 10.7.1999, p. 31.

- (10) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 29 December 2003, of its wish to take part in the adoption and application of this Regulation.
- (11) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland gave notice, by letter of 19 December 2003, of its wish to take part in the adoption and application of this Regulation.
- (12) 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.
- (13) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the Act of Accession.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1030/2002 is hereby amended as follows:

- (1) In Article 1 (1), the second sentence is replaced by the following:

"Residence permits to third-country nationals shall be issued as individual documents, irrespective of the age of the person¹. The residence permit shall only be issued as a stand-alone document in ID 1 or ID 2 format".

- (2) In Article 1 the following new paragraph (1a) is inserted:

"(1a) In justified cases, the validity period of the residence permits can be extended one-time only for a period not exceeding one month by affixing a uniform sticker to the document without further modification of the document or the data stored on the chip(s) referred to in point 16 of the Annex. The format of the uniform sticker, its security features and the mode of affixing it to the document shall be set out in accordance with the procedure described in Article 7(2)."

- (3) Article 1 (2) (a)(ii) reads as follows:

"Permits issued pending examination of a request for asylum, an application for a residence permit or an application for its extension."

- (4) Article 2 (1), the following points d), e), f) and g) are added:

"d) technical specifications for the storage medium of the biometric features and the security thereof, including prevention of unauthorised access;

¹ **FR:** scrutiny reservation.

- e) requirements for the quality of and common standards for the facial image and the fingerprint images.
- f) an exhaustive list of additional national security features which could be added by Member States in accordance with point (h) of the Annex"
- g) "the format of the uniform sticker referred to in Article 1(1a), its security features and the mode of affixing it to the document."

(5) In Article 3, the first paragraph is replaced by the following:

"In accordance with the procedure referred to in Article 7 (2), it may be decided that the specifications referred to in Article 2 shall be secret and not be published. In that case they shall be made available only to the bodies designated by the Member States as responsible for the printing and to persons duly authorised by a Member State or the Commission."

(6) In Article 4, the second paragraph is replaced by the following:

"No information in machine-readable form shall be included on the resident permit or on the storage medium of the residence permit referred to in Article 4a, unless provided for in this Regulation, or its Annex or unless it is mentioned in the related travel document by the issuing State in accordance with its national legislation. Member States may also store data for e-services such as e-government and e-business as well as additional provisions relating to the residence permit on a chip referred to in point 16 of the Annex. However, all national data must be logically separated from the biometric data referred to in Article 4a. (...)."

For the purposes of this Regulation, the biometric features in residence permits shall only be used for verifying¹:

- (a) the authenticity of the document;
 - (b) the identity of the holder by means of directly available comparable features when the residence permit is required to be produced by law."
- (7) The following Article 4a is inserted:

"Article 4a

"The uniform format for residence permits shall include a storage medium containing the facial image and two fingerprints images of the holder, both in interoperable formats. The data shall be secured and the storage medium shall be of sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data."

- (8) The following Article 4b is inserted:

"Article 4b²

"For the purposes of this regulation, Member States shall take biometric identifiers comprising the facial image and two fingerprints from third-country nationals 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 Child³.

¹ AT maintained a substantial scrutiny reservation on this paragraph as a residence permit allows the holder to cross borders and in the light of the different access possibilities to the VIS for authorities provided for via the draft Decision on access to the VIS and the proposal for a Regulation on the VIS currently under examination

² FR: scrutiny reservation

³ UK found that the reference to the two conventions were superfluous, as those who are parties to the Conventions are in any case bound by them. In addition, a reference would give rise to problems of "cross jurisdiction" (either the European Court of Human Rights or EJC).

The following biometric identifiers shall be taken:

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

The technical specifications for the capture of biometric identifiers shall be set in accordance with the procedure described in Article 7(2) and with ICAO standards and the technical requirements for passports issued by Member States to their nationals pursuant to Regulation 2252/2004¹.

The following applicants shall² be exempt from the requirement to give fingerprints:

- Children under the age of 6;
- Persons for whom fingerprinting is physically impossible."

[(8bis) The following Article 5a is inserted:

"Article 5a

Where Member States use the uniform format for issuing a residence permit to family members of EU citizens not covered by Article 3 (1) of Directive 2004/38 the following entry shall be introduced in the remark field (7.5-9): "Family member EU not covered by Article 3(1) of Directive 2004/38". This entry may be introduced in two Community languages."

¹ UK entered a scrutiny reservation as United Kingdom does not participate in that Regulation and has no say in the "Article 6 Committee".

² UK, supported by PT, suggested that "shall" be replaced by "may", meaning that in case the age limit was changed, the Regulation would not have to be amended. PT drew delegations' attention to the fact that this formulation would mean that it would be mandatory to collect biometric data of children from the age of 6 years, but that Member States would be allowed to exempt children under 6 years.

(8ter) The following Article 5b is inserted:

"Article 5b

Where Member States use the uniform format for purposes other than those covered by this Regulation, appropriate measures must be taken to ensure that confusion with the residence permit referred to in Article 1 is not possible and the purpose is clearly indicated on the card."]¹

(9) In Article 9, the third paragraph is replaced by the following:

"The integration of the photograph provided for in point 14 of the Annex shall be implemented at the latest on []². The storage of the facial image as primary biometric identifier shall be implemented at the latest two years, and the storage of the two fingerprint images at the latest three years after the adoption of the respective technical measures provided for in Article 2 (1) d) and e).

For a transitional period of two years after the adoption of the first technical specifications for facial image referred to in the third paragraph of Article 9 the residence permit may continue to be issued in sticker form."

(10) The Annex is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth 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 all Member States.

Done at Brussels,

For the Council
The President

¹ Amendment in square brackets proposed by COM, cf. the introductory note

² Date to be added - depending on the date of adoption of the text under examination.

ANNEX TO THE ANNEX

The Annex to Regulation (EC) No 1030/2002 is amended as follows:

1. Point (a) "Description" is amended as follows:

(1) The first paragraph is replaced by the following;

"a) Description

The residence permit will be produced as a stand-alone document in ID 1 or ID 2 format. It will be based on the specifications set out in the ICAO documents on machine-readable visas (document 9303, part 2) or on machine-readable travel documents (cards) (document 9303, part 3). The residence permit in sticker form may only be issued until two years after the adoption of the technical specifications referred to in the third paragraph of Article 9. It will contain the following entries:....."

(2) After point 8 the following point is inserted:

"8.a:

The document title referred to in number 1 may also be repeated along the bottom of the card in a further two languages. The headings referred to in numbers 2 to 8 should be indicated in the issuing Member State's language(s). The issuing Member State may add another Community language, either in the same line or below each other, with a total of no more than two languages."¹

¹ **FI** and **SE** could accept this wording. **EE** suggested the following wording:... "the bottom of the card in ~~at least a further~~ two languages..". The **Chair** recalled that for technical reasons such a solution would no be possible. **COM** preferred a harmonised approach and suggested that a solution could be to add similar wording as the one used for the visa sticker (Regulation 1683/95) The Regulation 1683/95 reads: "*The words designating the boxes shall appear in English and French. The issuing State may add a third official Community language. However, the word 'visa' in the top line may appear in any one official language of the Community.*" **COM** suggested that the wording for the residence permit could be adapted accordingly.

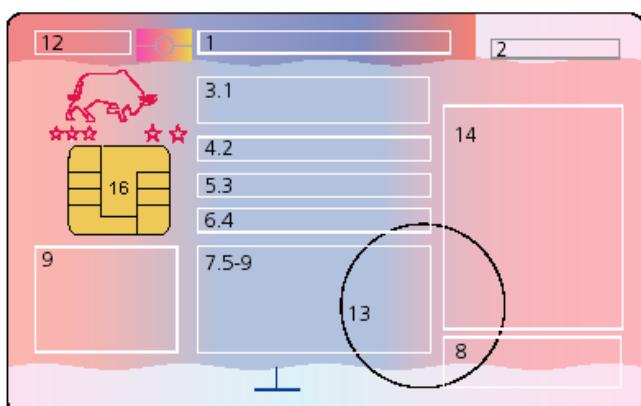
(3) The following new point 16 is added:

"16. A RF chip shall be used as a storage medium in accordance with Article 4a. Member States may store data on this chip or incorporate in the residence permit a separate contact chip for national use which shall comply with ISO standards and shall in no way interfere with the RF chip."¹

2. A new point (h) is added after point (g):

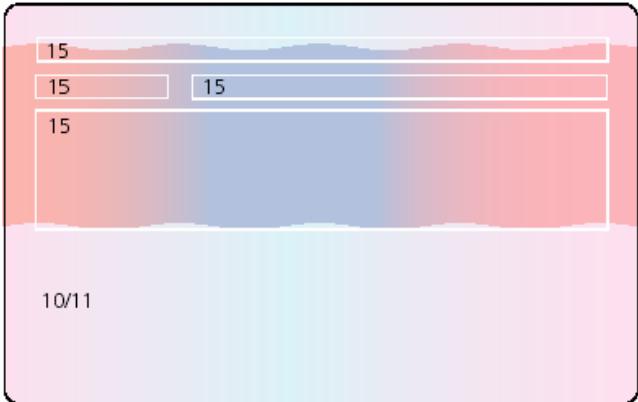
"(h) Member States may also add additional national security features, provided that these are included in the list established under Article 2(1)(f) and provided that they comply with the harmonised appearance of the following model and that the efficiency of the uniform security features is not diminished."

3. The following model is to be inserted²:



¹ COM noted that in accordance with the outcome of the "Article 6 Committee" the model had to be changed if a second chip for national data was chosen. The second chip should be placed on the back of the card in order to maintain the uniformity at the front of the card, even if it is not compliant with ICAO standards.

² To be modified in accordance with the findings of the "Article 6 Committee" (contact chip on the backside)



4. The reference "Residence permit for third country national in sticker form" should be renamed in "Residence permit in ID 2 format".
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