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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)

{SWD(2018) 110 final} - {SWD(2018) 111 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

Ensuring the security of travel and identity documents is a key element in the fight against terrorism and organised crime and building genuine Security Union. Many of the initiatives taken by the EU in recent years to enhance and reinforce external border management rely upon secure travel and identity documents. The recent amendment of the Schengen Borders Code<sup>1</sup> makes it obligatory to systematically check all persons and verify their travel documents, regardless of the holder's nationality, against the Schengen Information System (SIS) and the Interpol Stolen and Lost Travel Document (SLTD) database.

EU citizens are increasingly mobile. More than 15 million EU citizens reside in and more than 11 million work in a Member State other than their country of nationality.<sup>2</sup> Over a billion people travel every year within the EU or cross its external borders.<sup>3</sup>

This proposal for a Regulation is part of the Action Plan of December 2016 to strengthen the European response to travel document fraud,<sup>4</sup> in which the Commission identified actions to address the issue of document security, including identity cards and residence documents, in the context of recent terrorist attacks in Europe. The objectives of that Action Plan were subsequently endorsed by Council Conclusions<sup>5</sup>, which followed on the Council's repeated calls to improve the security of identity and residence documents.<sup>6</sup>

Already in its 2016 Communication on 'Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders',<sup>7</sup> the Commission underlined the need for secure travel and identity documents wherever it is necessary to establish beyond doubt a person's identity, stressing that an improved approach would rely on robust systems to prevent abuses and the threats to internal security arising from failings in document security. Moreover, in the 2017 Citizenship report, the Commission committed to analysing policy options to improve the security of identity cards and residence documents.<sup>8</sup>

Of twenty-six EU Member States that issue identity cards to their nationals, identity card ownership is common and compulsory in 15 Member States.<sup>9</sup> In accordance with EU law on

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<sup>1</sup> Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.

<sup>2</sup> 2016 Annual report on intra-EU labour mobility (2015 data).

<sup>3</sup> Tables on cross-border trips of EU citizens 2015 (all reasons) - [http://ec.europa.eu/eurostat/statistics-explained/index.php/Tourism\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Tourism_statistics).

<sup>4</sup> COM(2016) 790 final.

<sup>5</sup> Council Conclusions on the Commission Action plan to strengthen the European response to travel document fraud adopted on 27 March 2017 <http://www.consilium.europa.eu/en/press/press-releases/2017/03/27/jha-travel-document-fraud>.

<sup>6</sup> Already in 2005, Member States unanimously adopted Council Conclusions on minimum standards relating to the security of issuing processes for Member States' identity cards (Council doc. 14390/05). This was followed by a Resolution in 2006 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014938%202006%20INIT>.

<sup>7</sup> COM(2016) 602 final.

<sup>8</sup> Council Conclusion on the EU Citizenship Report 2017 adopted on 11 May 2017 <http://data.consilium.europa.eu/doc/document/ST-9080-2017-INIT/en/pdf>.

<sup>9</sup> In addition in five other Member States citizens are obliged to hold a non-specific document for identification purposes. In practice this very frequently is an identity card.

free movement of persons (Directive 2004/38/EC<sup>10</sup>), identity cards can be used by EU citizens as travel documents, both when travelling within the EU and also to enter the EU from non-EU countries, and they are indeed frequently used for travel. Moreover, Member States have agreements with a number of third countries allowing EU citizens to travel using their national identity cards. This also includes travelling to third countries to engage in terrorist activities and return to the EU.

Currently, security levels of national ID cards delivered by Member States and of residence documents for EU nationals residing in another Member State and their family members vary significantly, which increases the risk of falsification and document fraud as well as leading to practical difficulties for citizens when they seek to exercise their right of free movement.

EU citizens also use their identity cards to establish their identity in their daily life for public and private entities when exercising their right to reside in another EU country (mobile EU citizens).

In line with Directive 2004/38/EC, mobile citizens and their family members, who are not nationals of a Member State, also receive documents proving their residence in their host Member State. While these residence documents are not travel documents, residence cards for those family members of mobile EU citizens, who themselves are not nationals of a Member State, used together with a passport grant the holder the right to enter the EU without a visa when they accompany or join an EU citizen.

Forgery of documents or false representation of material facts concerning the conditions attached to the right of residence have been identified as the most relevant case of fraud in the context of the Directive,<sup>11</sup> which in turn enables fight against such fraud in its Article 35.

Against this background, it is crucial that the EU and especially the Member States intensify efforts to improve the security of documents issued to EU citizens and their third-country national family members. Enhanced document security is an important factor in improving the security within the EU and at its borders and in supporting the move towards an effective and genuine Security Union. The inclusion of biometric identifiers, and particularly the inclusion of fingerprints, renders documents more reliable and secure. In that context, it is of crucial importance to phase out documents with weak security features as quickly as possible.

The European Commission 2018 Work Programme includes the presentation of a legislative initiative (REFIT) to improve the security of identity cards and residence documents issued to EU citizens and their family members, who are not nationals of a Member State.<sup>12</sup> The aim is to enhance European security by closing security gaps resulting from insecure documents and to facilitate the exercise of EU free movement rights by mobile EU citizens and their family members by increasing the reliability and acceptance of their documents in cross-border situations.

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<sup>10</sup> 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 Member States (OJ L 158, 30.4.2004, p. 77).

<sup>11</sup> COM (2009) 313 final.

<sup>12</sup> This topic was also discussed in the framework of the REFIT Platform (REFIT Platform Opinion on the submission by a citizen (LtL 242) on Identity and Travel Documents, 7 June 2017). The REFIT Platform encouraged the Commission to analyse the feasibility of harmonising identity and residence documents, or any of their key features, with a view to facilitating free movement and tackling the challenges faced by EU mobile citizens in their host countries.

- **Consistency with existing policy provisions in the policy area**

The EU offers its citizens an area of freedom, security and justice without internal borders, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border management, asylum, immigration and the prevention and combating of crime and terrorism. Europeans consider free movement to be a major achievement of European integration. It covers the right to enter and leave the territory of another Member State, and the right to stay and live there. Measures regarding free movement are inseparable from measures introduced to guarantee security within the European Union.

Many of the EU's security measures rely upon secure travel and identity documents – such as the systematic checks established by the Schengen Border Code<sup>13</sup> in the Schengen Information System. Enhancing the exchange of information through the interoperability of EU information systems for security, borders and migration management as recently proposed by the Commission<sup>14</sup>, will also depend on enhanced document security, including for conducting identity checks by competent authorities within the territory of EU Member States.

The Free Movement Directive (2004/38/EC) sets out the conditions for the exercise of the right of free movement and residence (both temporary and permanent) in the Union for EU citizens and their family members. This Directive provides that, in conjunction with a valid identity card or passport, EU citizens and their family members may enter and live in another Member State and apply for the appropriate residence documentation. The Directive, however, does not regulate the format and standards for identity cards to be used to enter or leave EU Member States. Similarly, it does not provide for specific standards for residence documents issued to EU citizens and their non-EU family members, apart from the title to be given to the latter ones, i.e. "Residence card of a family member of a Union citizen" (*see Article 10(1) of Directive 2004/38*).

In recent years, EU standards have been introduced for several identity and travel documents used in Europe. EU law already provides for standards for security features and biometrics (facial image and fingerprints) in passports and travel documents issued by Member States<sup>15</sup> and for uniform formats for visas<sup>16</sup> and residence permits for third-country nationals.<sup>17</sup> These standards are also used for local border permits<sup>18</sup> and permits issued in the framework of the EU legislation in relation to legal migration. A new common design for residence permits for third-country nationals has recently been adopted with the aim of further improving the security features on these.<sup>19</sup> In the absence of harmonisation measures, Member States can

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<sup>13</sup> Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.

<sup>14</sup> Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration), COM(2017) 794 final.

Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226

<sup>15</sup> Regulation (EC) No 2252/2004 (OJ L 385, 29.12.2004, p.1). UK and IE are not part of this measure.

<sup>16</sup> Regulation (EC) No 1683/95 (OJ L 164, 14.7.1995, p.1).

<sup>17</sup> Regulation (EC) No 1030/2002 (OJ L 157, 15.6.2002, p.1).

<sup>18</sup> Regulation (EC) No 1931/2006 (OJ L 405, 30.12.2006, p. 1).

<sup>19</sup> Regulation (EU) 2017/1954 of the European Parliament and of the Council of 25 October 2017 amending Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals.

choose their desired format for residence and permanent residence cards for third-country national family members of mobile EU citizens. In doing so, they can choose to follow the same "uniform format" as provided for in Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals<sup>20</sup> amended as mentioned above in 2017, provided that their status of family members of a Union citizen is clearly indicated on the card and that confusion with residence permits which are the subject of Regulation 1030/2002 is avoided.<sup>21</sup> In 2008, Member States expressed their will to use the uniform format for this purpose in a Council statement,<sup>22</sup> and several Member States followed this – legally non-binding - commitment.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

Article 21 TFEU confers on EU citizens the right to move and reside freely within the territory of EU Member States. Article 21 provides for the possibility for the Union to act and to adopt provisions with a view to facilitating the right to move and reside freely within the territory of the Member States if action to attain this objective is necessary to facilitate the exercise of this right. The ordinary legislative procedure applies.

The proposed Regulation aims to facilitate the exercise of the right to free movement of EU citizens in a secure environment, i.e. to facilitate their right to travel to and reside in any Member State with their national identity cards and to rely on these cards there as reliable proof of nationality, as well as their right to rely on the residence documentation issued to them as residents of a Member State other than their country of nationality.

The proposal will provide for more secure documents, through improved security features of national identity cards and residence documents, which will allow exercising free movement rights in a more secure environment. This will protect public authorities and EU citizens and their family members from crime, falsification and document fraud. Accordingly, this proposal contributes to improving the overall security within the EU.

Article 21(2) TFEU expressly provides a legal basis for measures to facilitate the exercise of free movement of EU citizens, including by reducing the risk of fraud in the form of forgery of documents and by ensuring the trust needed for free movement.

### **• Subsidiarity (for non-exclusive competence)**

The terrorist threat facing the European Union is transnational and cannot be tackled by individual Member States alone. Terrorists and serious criminals are active across borders, and, as underlined in the 2016 Action Plan, document fraud has become an enabler of their criminal activity. Secure identity cards and residence documents are essential elements to ensure the trust needed for free movement within an area of freedom and security.

In addition, the European Union is committed to facilitating the free movement of persons within an area of freedom, security and justice. To date, individual Member States have exercised their competences to implement national policies regarding identity and residence documents without necessarily taking into account the objective of facilitating free movement of persons or of improving security within the Union. Several measures have already been

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<sup>20</sup> Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157 of 15.6.2002, p. 1).

<sup>21</sup> As recognised in Article 5a of Council Regulation 1030/2002.

<sup>22</sup> Council Document of 11 June 2008 (13.06), PV/CONS 26 JAI 188, 8622/08 ADD 1.

taken to tackle problems identified at the national level. For example, some Member States have created online registries allowing public and private sector organisations to check the authenticity of documents. However, there is no common approach to improving the security features of these documents and establishing the data that documents should provide as a minimum. This results in continuing problems across Member States and is an open door to document fraud.

If measures are not taken consistently EU level, security gaps will not be comprehensively addressed. The absence of EU level action will also result in more practical problems for EU citizens, national authorities and businesses in a context where citizens live and travel around the Union, and across the Union's borders. Addressing systemic problems in relation to security and free movement, to ensure a high level of security for national identity cards and residence documents and through minimum common standards, clearly requires action on an EU scale. The objectives of any initiative to remedy the current situation cannot be achieved at a national level. All these documents have an intrinsic European dimension because of their connection with the exercise of free movement rights in an area of freedom, security and justice.

This proposed Regulation would not require Member States to issue documents that are not currently issued.

- **Proportionality**

EU action can add considerable value in addressing these challenges and is in many cases the only way by which a converged and compatible system can be achieved and maintained. Security within the European Union and at its external borders has been placed under considerable strain in recent months and years. Ongoing security challenges have underlined the inextricable link between free movement of persons inside the European Union and robust external border management. Measures to improve security and external border management, such as the systematic checks against databases on all persons, including EU citizens, crossing the external borders are weakened if the main instrument for identifying citizens is problematic even within a national context.

Citizens can also not rely on their documents to exercise their rights if they cannot be sure their documents will be accepted outside their Member State(s) of issuance.

Eliminating the 'weakest links' and introducing minimum standards for the information provided on these document and for security features common to all Member States that issue them, will facilitate the exercise of free movement and improve security within the EU and at its borders. Many Member States have already developed and introduced tamper-proof identity cards. Complete harmonisation is not warranted and a proportionate measure ensuring minimum document security standards is proposed. This includes the introduction of mandatory fingerprints, which are the most reliable way of establishing the identity of a person, and a proportionate measure in light of the security threats facing the Union. For residence cards issued to third-country family members, it is suggested to use the same format as already agreed at Union level in Regulation 1030/2002 in respect of residence permits of third-country nationals to which it applies.

- **Choice of the instrument**

A Regulation is the sole legal instrument ensuring the direct and common implementation of EU law in all Member States. In a field where divergences have proved detrimental to free movement and security, a regulation will ensure that the desired commonality is achieved.

### **3. STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

The consultation process combined tools of a more general reach such as a public consultation with more targeted consultations of Member States and stakeholder groups. In addition, the consultation took into account the direct feedback received from citizens and the opinion expressed by the REFIT platform encouraging the Commission to analyse the feasibility of harmonising identity and residence documents, or any of their key features, with a view to facilitating free movement and tackling the challenges faced by EU mobile citizens in their host countries.

Detailed information on the results of the consultation process can be found in Annex 2 of the Impact Assessment accompanying this proposal.

- **Collection and use of expertise**

The Commission awarded a contract to the Centre for Strategy & Evaluation Services (CSES) to carry out a study on ‘EU policy initiatives on residence and identity documents to facilitate the exercise of the right of free movement’ (finalised in August 2017).

A review of the concepts of the initiative was carried out by the Commission’s Joint Research Centre.

A study conducted by Milieu for the European Parliament “The Legal and Political Context for setting up a European Identity Document, May 2016 also provided useful information.<sup>23</sup>

- **Impact assessment**

The Impact Assessment supporting this proposal received a positive opinion by the Regulatory Scrutiny Board, with some suggestions for improvement.<sup>24</sup> The impact assessment considered a number of options for identity cards and residence documents compared with the status quo: including soft law measures, minimum common requirements and wider harmonisation. The status quo was considered unsatisfactory and wider harmonisation was not considered proportionate.

The preferred option was therefore setting minimum security standards for identity cards and minimum common requirements for residence documents issued to EU citizens, and, in the case of the residence cards for third country family members of EU citizens, the use of the common uniform format for residence permits for third-country nationals. This is to be accompanied by soft law measures, to ensure smooth implementation that is tailored to the specific situation and needs of each Member State.

The measures in this option will improve the acceptance of documents across the EU and the enhanced document security features it provides for will yield direct and recurrent cost savings and reduced hassle costs for Union citizens and their family members, public administrations (e.g. border guards checking documents) and public and private service operators (e.g. airlines, health, banks and insurance and social security providers).

Other benefits of the preferred option include a reduction of document fraud and identity theft and a generally improved level of security (reduction of crime, fraud and terrorism) within the EU and at its borders. Mandatory fingerprints were added to the preferred option for identity cards in order to further increase effectiveness in terms of security. The inclusion of two biometric identifiers (facial image, fingerprints) will improve the identification of persons and

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<sup>23</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556957/IPOL\\_STU\(2016\)556957\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556957/IPOL_STU(2016)556957_EN.pdf).

<sup>24</sup> <http://ec.europa.eu/transparency/regdoc/?fuseaction=ia>

align the level of document security of identity cards of EU citizens and residence cards issued to third country family members to the standards of, respectively, passports issued to EU citizens and residence permits issued to third country nationals who are not family members of EU citizens). Free movement of persons will also be facilitated by improved documents as they will allow for quicker, easier and more secure use of documents.

The phasing out period of identity cards and residence cards for family members of EU citizens that do not comply with the standards set out in the preferred option was shortened to 5 years. The least secure documents shall be phased out within 2 years. Any further delays in implementing these modifications would create long-term security gaps and diminish the effectiveness of and coherence with other recently adopted security measures within the EU and at its external borders. Hence, the shorter phasing out will accelerate the security gains to be provided by the improved documents.

- **Regulatory fitness and simplification**

The initiative is included in the Commission Work Programme 2018 under the REFIT initiatives in the Area of Justice and Fundamental Rights Based on Mutual Trust.

This initiative responds to an opinion of the REFIT Platform. In its opinion<sup>25</sup>, the REFIT Platform encouraged the Commission to analyse the feasibility of harmonising identity and residence documents, or any of their key features, with a view to facilitating free movement and tackling the challenges encountered by EU mobile citizens in their host countries.

The Commission also looked at opportunities to simplify and reduce burdens. The beneficiaries of this proposal range from citizens to businesses and public administrations. The impact assessment estimated annual recurrent cost savings generated by *inter alia* accelerated pre-boarding checks across the EU, by accelerated document checks across the EU when opening a bank account, by reduced compensation payments for authorities and airlines. Citizens, businesses and public administrations will also benefit from reduced hassle costs through better awareness of document formats and the rights linked to the documents, through improved acceptance of more secure documents.

- **Fundamental rights and data protection**

This proposal positively affects the fundamental right on freedom of movement and of residence under Article 45 of the Charter of Fundamental Rights of the European Union (Charter) by addressing the difficulties in recognition and insufficient security of both identity cards and residence documents, particularly for non-EU family members. More reliable identification of individuals will be possible through the use of biometric data ensuring personal data is accurate and protected appropriately.

This proposal implies processing of personal data including biometric data. There are potential impacts on individuals' fundamental rights, namely Article 7 of the Charter on the respect of private life and Article 8 on the right to the protection of personal data. Processing the personal data of individuals, including collection, access and use of personal data, affects the right to privacy and the right to protection of personal data under the Charter. Interference with these fundamental rights must be justified.<sup>26</sup>

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<sup>25</sup> REFIT Platform Opinion XIII.3a adopted in June 2017

<sup>26</sup> The CJEU established the criteria for justification of such interference in the context of Regulation 2252/2004 in Case C-291/12 *Schwarz v Stadt Bochum*, ECLI:EU:C:2013:670. It recalled that limitations to Charter rights must be 'provided for by law, respect the essence of those rights, and, in accordance with the principle of proportionality, [be] necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others' and



As regards the right to the protection of personal data including data security, the relevant EU legislation<sup>27</sup> i.e. Regulation 2016/679 applies. No derogation from the data protection regime of the Union is envisaged and clear rules, conditions and robust safeguards shall be implemented by Member States in line with the EU data protection acquis as appropriate. The compulsory inclusion of biometric data in identity cards of EU citizens and residence cards issued to non-EU family members of Union citizens will be implemented with specific safeguards in line with those in place for passports and other travel documents<sup>28</sup> and that for residence permits.<sup>29</sup>

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the EU budget.

#### **5. OTHER ELEMENTS**

##### **• Implementation plans and monitoring, evaluation and reporting arrangements**

In order to ensure an effective implementation of the measures foreseen, and monitor its results, the Commission will continue working closely with relevant stakeholders from national authorities and EU agencies.

The Commission will adopt a monitoring 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 will be collected. Member States should report to the Commission one year after the start of application and subsequently on an annual basis, some information that is considered essential to effectively monitor the functioning of this Regulation. Most of this information will be gathered by the competent authorities during the course of their duties and will therefore not require additional data collection efforts.

The Commission will evaluate the effectiveness, efficiency, relevance, coherence and EU added value of the resulting legal framework, no sooner than 6 years after the date of application to ensure that there is enough data relating to the application of the Regulation. The evaluation shall include stakeholders' consultations to collect feedback on the effects of the legislative changes and the soft measures implemented. The benchmark against which progress will be measured is the baseline situation when the legislative act enters into force.

##### **• Detailed explanation of the specific provisions of the proposal**

Chapter I (Articles 1 and 2) of the proposal describes the subject matter and the scope of the Regulation. It concerns all documents linked to the exercise of free movement by EU citizens and their family members, and which are mentioned in Directive 2004/38/EC on Free

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found that the objective 'to prevent the falsification of passports and the second, to prevent fraudulent use thereof' met those criteria.

<sup>27</sup> 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) (Text with EEA relevance) and Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

<sup>28</sup> Council Regulation (EC) No 2252/2004.

<sup>29</sup> Council Regulation (EC) No 1030/2002.

Movement. These include national identity cards which allow to exit and to enter another Member State, residence documents issued to EU citizens and residence cards issued to non-EU family members of EU citizens.

Chapter II details in Article 3 the general requirements including minimum security features that national identity cards must meet. They draw on the specifications in ICAO document 9303. These ICAO specifications are common to machine-readable travel documents and ensure global interoperability when these documents are verified using visual inspection and machine readable means.

Article 4 describes the specific requirements that must be taken into account when collecting biometric data.

Article 5 provides for a five-year phasing out period of previous formats, except for cards which are not machine-readable in accordance with ICAO document 9303, part 3 (seventh edition, 2015), which will have to be phased out within two years from the date of application of the Regulation. These phasing out periods allow the EU and its Member States to fill the existing security gap for identity cards as quickly as possible, while also taking into account interoperability requirements if identity cards do not meet the standards set in ICAO document 9303 part 3 on machine readability.

Chapter III (Article 6) deals with residence documents issued to EU citizens. These documents are available to EU citizens who have exercised their right of free movement and state their right of residence in their host Member State, which is granted directly by the Treaty on the Functioning of the European Union.

They are also a means of proof of residence. Minimum security standards in relation to the format of these documents will facilitate their verification and authentication by other Member States, in particular in the citizen's Member State of origin.

Chapter IV deals with residence cards issued to family members of EU citizens who have exercised their right of free movement. Those cards are issued to such family members who are not themselves Union citizens. They state their derived right of residence in their host Member State as family members of EU nationals who have exercised their right of free movement. In addition, where such family members are subject to an entry visa obligation in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law, residence cards exempt them from the obligation to hold a visa when accompanying or joining a citizen of the Union.

As a document which may entail a visa exemption in these circumstances, the level of security of its features should be reinforced. Specifically, the security features should be the same as provided for, in respect of residence permits delivered to non-EU residents by Member States, by Council Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals (Article 7) as amended. However, as provided for in Article 10(1) of Directive 2004/38/EC, a reference to the status as family member of a citizen of the Union must be included in the title of the document. Member States may use a standardised code, in particular if the reference is too long to fit into the title field.

Details of the arrangement for phasing out non-compliant residence cards are set out in Article 8. Cards that have already been issued in the uniform format as described in Council Regulation 1030/2002 as amended by Regulation 380/2008 but do not yet contain the changes introduced by Regulation (EU) 2017/1954, will be phased out within five years after the date of application of the proposed Regulation. For the other cards, which have not yet included the amendments introduced by Regulation 380/2008, and which do not match that level of document security, a shorter phasing out of two years is foreseen.

Chapter V sets out common provisions for the three types of documents.

Article 9 describes the obligation for Member States to designate contact points for the implementation of the Regulation.

Article 10 sets out the data protection framework and further specify data protection safeguards.

Article 11 sets out that the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

Article 12 sets out that the Commission should present a Report on the implementation of this Regulation and a Report on the main findings of the evaluation to the European Parliament, the Council and the European Economic and Social Committee. The Commission should carry out the evaluation of this Regulation in line with the Commission's better regulation Guidelines and pursuant to paragraphs 22 and 23 of the Inter-institutional Agreement of 13 April 2016<sup>30</sup>. In order to be able to issue such a Report, the Commission needs to rely on input from Member States.

Article 13 provides for the entry into force of the Regulation the day following its publication in the Official Journal of the European Commission, and its date of application 12 months after its entry into force.

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<sup>30</sup> 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.

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 Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

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.
- (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.<sup>3</sup> 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

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> 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).

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 Directive<sup>4</sup>.
- (5) The 2016 Action Plan on document security of December addressed the risk from fraudulent identity cards and residence documents<sup>5</sup>, 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,<sup>6</sup> 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.
- (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

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

<sup>5</sup> COM(2016) 790 final.

<sup>6</sup> 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).

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 Union<sup>7</sup>. 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.
- (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 1030/2002<sup>8</sup> which lays down a uniform format for residence permits for third-country nationals as last amended by Regulation (EU) 2017/1954<sup>9</sup>. 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

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<sup>7</sup> OJ L 23, 26.11.2009

<sup>8</sup> 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.

<sup>9</sup> OJ L 286 of 1.11.2017, p.9.

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)<sup>10</sup> 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.
- (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-Making<sup>11</sup> 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

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<sup>10</sup> OJ L 119, 4.5.2016, p. 1.

<sup>11</sup> 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.

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.

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;
- (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).
- (2) The document title ('Identity card') shall appear in the official language or languages of the issuing Member State and 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 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.
- (5) The following persons shall be exempt from the requirement to give fingerprints:
  - (a) children under the age of 12 years;
  - (b) persons whose fingerprinting is physically impossible.
- (6) Member States may enter details and observations for national use as required in the light of their national provisions.
- (7) 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.
- (8) 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.
- (9) Where Member States add national security features to the identity cards, the cross-border interoperability of the identity cards and the efficiency of the minimum security standards shall not be diminished.
- (10) Identity cards shall have a maximum period of validity of 10 years. Derogations may be provided for 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 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 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 indicated*

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;
- (f) date of issue;
- (g) place of issue.

## **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 may use the standardised code 'Art 10 DIR 2004/38/EC' or 'Art 20 DIR 2004/38/EC', respectively.

- (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, 2<sup>nd</sup> subparagraph, of Council Regulation (EC) No 1030/2002 as last amended by Regulation (EU) 2017/1954.

#### *Article 8*

##### *Phasing out of existing residence cards*

- (1) 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 years after the date of application of this Regulation*], whichever is earlier.
- (2) 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*

- (1) Each Member State shall designate one authority as a contact point 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.

- (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 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 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*  
*The President*

*For the Council*  
*The President*