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NOTE

From: Presidency
To: Permanent Representatives Committee

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

1. On 17 April 2018, the Commission submitted a proposal for a Regulation 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 movement¹. The aim of the proposal is to improve security of 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. This aim is achieved by introducing minimum standards for the information provided on these documents and for security features common to all Member States that issue them. This should facilitate the exercise of free movement and improve security within the EU and at its borders, in particular by limiting the scope for document fraud and identity theft.

¹ 8175/18.

2. The proposal was examined by the Working Party on Frontiers on 4 and 29 May, 26 June, 16 July, and 14 September, as well as by JHA Counsellors on 4 and 22 October 2018. At the last meeting a large majority of Member States welcomed the Presidency compromise proposal.
3. The Presidency strived to take into account concerns and suggestions expressed by Member States during discussions in preparatory bodies. As such, the Presidency compromise text of the Regulation aims at addressing the following issues:

- a) security standards and specifications

The Presidency aimed to clarify the standards applicable to ID cards in order to ensure efficient application of the Regulation. That's why, in Art 3(1) and Art 3(5a), the compromise proposal provides further details regarding the security standards and specifications, making references to the relevant Union law.

- b) entry into force and phase out of identity cards not fully meeting the requirements

Some Member States have raised significant concerns regarding the timing for implementation of the Regulation. Particularly, the need to replace millions of identity cards held by citizens within a short period of time was considered as close to impossible. In order to address this issue, the Presidency compromise proposal has extended the period of entry into application from 12 month to 24 months (Article 13).

In addition, Art 5 concerning the phase-out period of identity cards which do not meet the specified standards has been significantly amended:

- i. paragraph (2)(a) has extended from 2 years to 5 years, following the date of application, the phase-out period of cards which do not meet the minimum security standards or do not include a functional machine-readable zone (MRZ);
- ii. the new paragraph (2)(b) takes into account concerns regarding the nuisance caused to elderly citizens by the need to replace their ID cards as a result of the Regulation, and thus, now allows citizens aged 70 or more to continue using the ID cards which meet the minimum security standards until their expiry;

- iii. the new paragraph (3) addresses the issue where some Member States already issue cards that meet the minimum security standards but their machine-readable zone (MRZ) cannot be fully read by other Member States. Given the significant investment already made in issuing these cards and the fact that they meet the minimum security standards, the Presidency compromise allows for these cards to be phased-out within 10 years. However, this is under condition that the issuing Member State informs the other Member States about the rules necessary to read the cards and that no Member State notifies the Commission about its inability to read such cards;

The Presidency believes that these changes were necessary to ensure an effective application of the Regulation. The compromise text offers the right balance between the need to rapidly replace documents with the highest security risk and the objective capability of national authorities to prepare for implementation and ensure a smooth transition of citizens to new documents.

c) collection and storage of biometric identifies

The Presidency compromise text clarifies in the new recital 19aa that the Regulation does not provide a legal basis for setting up databases for storage of biometric identifies, which is a matter of national law that needs to comply with EU data protection legislation.

In addition, as the proposal provides for collection of fingerprints from children (children under the age of 12 may be exempt), it is important to ensure that this is done in accordance with the relevant international treaties and EU law. For this purpose, Art 4(2) has been amended, referring to the safeguards included in the Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights and the UN Convention on the Rights of the Child.

d) validity period of ID cards issued to elderly citizens and children

Following suggestions by a number of Member States, in Art 3(10), the Presidency specified that a derogation from the 10 year maximum period of validity of identity cards may be provided by Member States for persons aged 70 or above. While a few delegations requested the age limit to be lower (65), the Presidency believes that this would cause too big a security risk, given the growing life expectancy and changes in the reliability of biometric identifiers which are likely to occur also in the case of elderly.

In addition, the Presidency compromise proposal stipulates that the maximum period of validity of identity cards issued to children should be 5 years.

e) exchange of security certificates

The Presidency believes that it is important to ensure that authorities of all Member States can access the relevant information stored on ID cards for the purpose of identification of their holders. For this reason, a new provision in Art 3(4) introduces an obligation for Member States to exchange information necessary to authenticate the storage medium of the card and verify the biometric data.

f) establishing further technical specifications and the committee procedure

The Presidency compromise proposal includes new Articles 12a and 12b, which allow the Commission to adopt implementing acts, with the assistance of the Committee established by Art 6 of Regulation (EC) 1683/95, to ensure compliance of ID cards and residence documents with future minimum security standards.

4. Two delegations opposed the compulsory inclusion of fingerprints on ID cards, claiming that this measure is disproportionate. The Presidency finds that fingerprints are the most reliable way of establishing the identity of a person and their inclusion on ID cards is a proportionate measure in light of the objectives of the Regulation. The inclusion of biometric identifiers, and particularly the inclusion of fingerprints, will make the documents significantly more secure and will align the security of identity cards to most passports issued to EU citizens.

5. In a number of meetings of the preparatory bodies, Ireland raised the issue of the Irish passport cards. The Irish passport cards are classified by Ireland as a passport in a card format. They may only be issued to persons that already possess a valid passport for the reason of convenience. The card is valid for five years and allows bearers to travel within the EU, EEA and Switzerland. Ireland does not collect or store fingerprints for passport purposes nor does it have any plans to do so. Ireland also does not issue identity cards to its citizens, nor does it have existing or proposed legislation to introduce them.

If the Regulation were to be adopted as it stands, Ireland is concerned that:

- a. it would classify passport cards as identity cards, which is politically problematic for Ireland and furthermore it would compel Ireland to introduce fingerprinting, whereas EU Council Regulation 2252/2004 on passport security standards is not binding on Ireland;
- b. it could also create confusion at EU borders due to a lack of clarity regarding the status of passport cards.

As a result, Ireland requested to specifically recognise in the Regulation passport cards as a passport and thus exclude them from the scope.

The Presidency is fully aware of the concerns of Ireland. However, as noted in the impact assessment², Irish passport cards are issued in the ID card format (ID-1) and grant their bearers the right to exit and to enter another Member State similar to identity cards issued by other Member States. This means that despite their denomination, passport cards should fall within the scope of the Regulation. In line with the objections raised by a few Member States regarding the Irish request, the Presidency believes that providing an exception for passport cards would create a security loophole, which runs contrary to the objectives of the Regulation. The recent amendment of the Schengen Borders Code³ makes it obligatory to systematically check all persons and verify their travel documents, regardless of the holder's nationality. The effectiveness of these checks, as well as interoperability of EU information systems, depends on documents that meet uniform, minimum security standards and that can be used to establish a person's identity beyond doubt.

6. *In light of the above, the Presidency invites COREPER to agree on the compromise proposal set out in Addendum (13462/18 ADD 1), with a view to granting the Presidency a mandate to start negotiations with the European Parliament.*

² 8175/18 ADD1.

³ 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.