



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Regulation (EC) 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States does not include any exceptions for the taking of fingerprints. Therefore it is necessary to insert provisions excluding children under the age of 6 years and persons who are physically unable to give fingerprints from this requirement.

- **General context**

The Council adopted Regulation (EC) 2252/2004 on security standards and biometrics for passports and other travel documents issued by Member States<sup>1</sup> on 13 December 2004.

At the time of the Commission proposal and the discussions on it in the European Parliament and the Council, no experiences with the use of biometric data for large scale applications in travel documents were available. These new technologies of inserting chips with biometric data had not yet been applied or tried out. During pilot projects of some Member States it appeared that the fingerprints of children under the age of 6 seemed not to be of a sufficient quality for one-to-one verification of identity. Furthermore, they are subject to important changes which make it difficult to check them during the entire period of validity of the passport.

Both for legal and security reasons it should not be left to national legislation to define the exceptions from the obligation to provide fingerprints for passports and other travel documents issued by Member States.

Consequently, the Commission proposes an amendment to Regulation (EC) 2252/2004 in order to provide harmonised exceptions: children under the age of 6 years and persons, who are physically unable to give fingerprints, should be exempt from this requirement.

- Furthermore as a supplementary security measure and in order to provide additional protection for children, the principle of "one person-one passport" will be introduced. It is also recommended by the International Civil Aviation Organisation (ICAO) and it ensures that the passport and the biometric features are only linked to the person holding the passport. It is more secure if every person has his/her own passport. If, for example, a passport is issued that also includes the person's children, indicating only the names and without photographs, only the biometric data of the respective parent would be introduced on the chip. The biometric information of the children would not be stored. As a consequence, the identity of the children cannot be checked in a reliable way. This could favour child trafficking. The introduction of the principle "One person-One passport" would

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<sup>1</sup> OJ L 385, 29.12.2004, p. 1.

avoid this negative effect.

- **New Comitology procedure**

Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty. Regulation (EC) 2252/2004 establishes a Comitology procedure in order to develop the technical specifications referred to in Article 2 which are necessary to implement the Regulation. The Regulation is not changed at all. The technical specifications are complementary to the Regulation and set out for example how access to the chip is secured. If these technical specifications have to remain secret in order to avoid that forgers or persons with bad intentions can have access and use them for malevolent purposes, the comitology committee can decide in accordance with Article 3 that they should be secret. This comitology decision will also not affect the Regulation. It presents just an execution of the requirements of the Regulation namely rendering travel documents more secure.

Consequently, the comitology procedure with scrutiny does not apply.

- **Existing provisions in the area of the proposal**

This proposal aims at amending Regulation (EC) 2252/2004 which does not currently cover exceptions from the fingerprint requirement. Therefore the introduction of the principle of 'one passport-one person' and exempting children under the age of 6 years and persons not physically able to give fingerprints from this requirement is a necessary complement to the existing legislation.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

This Regulation is an amendment to an existing Regulation (EC) 2252/2004. As regards the first amendment, the exception of the obligation to give fingerprints, it has been dealt with during the discussion on the Visa Information System where the European Data Protection Supervisor (EDPS) and the Article 29 data protection working party were consulted. The EDPS stated that fall-back procedures should be introduced for those persons who are unable to provide biometric identifiers, also during the discussions of the Amendment to the Common Consular Instructions introducing biometrics.

In relation to the second amendment, the introduction of the principle "one person-one passport", most Member States are already following this principle as it is also recommended by the International Civil Aviation Organisation.

- **Collection and use of expertise**

There was no need for additional external expertise (see above).

- **Impact assessment**

An impact assessment has not been carried out. This proposal is complementing the Regulation (EC) 2252/2004. It introduces the principle of 'one person-one passport' and exempts children under the age of 6 years and persons not physically able to give fingerprints from this requirement. For the first, most Member States are already following this principle and, therefore, no additional costs will be incurred for those Member States. Moreover, Member States issuing family passports already foresee a possibility to issue, on request, individual passports because they are, for example, necessary for travel to the US. Therefore, also in these cases no additional costs will be generated. Nevertheless, there will be some additional costs for citizens. They have to pay a fee for each passport. However, the passport is only necessary for travel to third countries because for travelling inside the EU an identity card is sufficient. Furthermore, the travel would become more secure as the children are better protected. In relation to the second – the exceptions from the obligation to provide fingerprints – the amendment is an answer to the request for introduction of fall-back procedures.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The Commission proposes an amendment to Regulation (EC) 2252/2004 in order to harmonise the indispensable exemption of children under the age of 6 years and persons, who are physically unable to give fingerprints, from this requirement. Furthermore, for reasons of ensuring the security of documents the general principle which is also recommended by the International Civil Aviation Organisation (ICAO), referred to as 'one person-one passport', is introduced. This will help avoiding the trafficking of children. They will have their own passport with their own biometric identifiers, which eases checks at the border.

- **Legal basis**

Article 62 (2) (a) TEC.

- **Subsidiarity principle**

Regulation (EC) 2252/2004 has been adopted by the Community. The Community also has competence to provide a harmonisation of exceptions to the requirement of giving fingerprints.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

This proposal amends the Regulation (EC) 2252/2004 and introduces the principle of

'one passport-one person' and exempts children under the age of 6 years and persons not physically able to give fingerprints from this requirement.

- **Choice of instruments**

Proposed instrument: Regulation.

Other means would not be adequate for the following reason(s).

Regulation (EC) 2252/2004 has to be amended by a Regulation.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) The European Council of Thessaloniki confirmed that a coherent approach is needed in the EU on biometric identifiers or biometric data for documents for third country nationals, EU citizen's passports and information systems (VIS and SIS II).
- (2) In this context, the Council has adopted Regulation (EC) No 2252/2004 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States<sup>4</sup> as an important step towards the use of new elements, which render the travel document more secure and establish a more reliable link between the holder and the passport as an important contribution to ensuring that it is protected against fraudulent use.
- (3) Regulation (EC) No 2252/2004 provides for a general obligation to give fingerprints which will be stored on a contactless chip in the passport. However, experience from tests showed that exceptions are needed. During pilot projects of some Member States it appeared that the fingerprints of children under the age of 6 seemed not to be of a sufficient quality for one-to-one verification of identity. Furthermore, they are subject to important changes which make it difficult to check them during the entire period of validity of the passport.
- (4) The harmonisation of exceptions to the fingerprinting requirement is essential in order to maintain common security standards and in view of simplifying border controls. Both for legal and security reasons it should not be left to national legislation to define

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

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ L 385, 29.12.2004, p. 1.

the exceptions from the obligation to provide fingerprints for passports and other travel documents issued by Member States.

- (5) Furthermore, as a supplementary security measure and in order to provide additional protection for children, the principle of "one person-one passport" should be introduced. It is also recommended by the International Civil Aviation Organisation (ICAO) and it ensures that the passport and the biometric features are only linked to the person holding the passport. It is more secure if every person has his/her own passport.
- (6) 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.
- (7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is therefore not bound by it or subject to its application. However, given that this Regulation aims to build upon the Schengen *acquis* under the provisions of the third part of Title IV 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.
- (8) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*<sup>5</sup>; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*<sup>6</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (10) 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*<sup>7</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement<sup>8</sup>.
- (11) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European

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<sup>5</sup> OJ L 131, 1.6.2000, p. 43.

<sup>6</sup> OJ L 64, 7.3.2002, p. 20.

<sup>7</sup> OJ L 176, 10.7.1999, p. 36.

<sup>8</sup> OJ L 176, 10.7.1999, p. 31

Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC<sup>9</sup> and 2004/860/EC<sup>10</sup>.

(12) Therefore, Regulation (EC) No 2252/2004 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Article 1 of Regulation (EC) 2252/2004 is amended as follows:

(1) paragraph 1 is replaced by the following:

"1. Passports and travel documents issued by Member States shall comply with the minimum security standards set out in the Annex.

They shall be issued as individual documents.";

(2) the following paragraph 2a is inserted after paragraph 2:

"2a. The following persons shall be exempt from the requirement to give fingerprints:

(a) children under the age of 6;

(b) persons, where fingerprinting is physically impossible."

#### *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 in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>9</sup> OJ L 368, 15.12.2004, p. 26-27

<sup>10</sup> OJ L 370, 17.12.2004, p.78-79