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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2016) 434 final.

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2016/0198 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC) No 1030/2002 laying down a uniform format for
residence permits for third-country nationals**

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

The current design of the residence permit originates from a Council Joint Action (97/11/JHA) adopted in 1997. Back in 2009, Member States considered that more sophisticated forgeries meant it was necessary to work on a new design for residence permits and decided to introduce more modern security features to improve the security features of residence permits.

Regulation (EC) No 1030/2002, as last amended by Regulation (EC) No 380/2008, lays down a uniform format for residence permits for third-country nationals. Due to the introduction of biometric features (facial image and fingerprints), the sticker version of the residence permit was abandoned, and since 20 May 2011 only card versions are permitted. During the negotiation of the 2008 amendment to the Regulation, which introduced biometric identifiers by means of a contactless chip in the residence permit, some Member States expressed the wish to include an optional contact chip for national use in their e-government services. This was accepted, as was the optional use of additional (national) security features.

This residence permit card is also used for the local border traffic permit and the specific permits issued under EU legislation on legal migration.¹

Uniformity versus national security features

The Commission is in favour of having a uniform format for residence permits, as is the case with the visa sticker. This would mean all Member States having the same card model, design and security features. However, taking into account the technical developments achieved in some Member States in the area of e-government, it was considered appropriate to accept the addition of a contact chip for e-government purposes for those Member States that wished to give third-country nationals the same advantages as their own citizens, while accepting that this would lead to a certain ‘non-uniformity’ of the format.

¹ Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p.1); Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12); Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44); Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ L 375, 23.12.2004, p.12); Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15); Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155, 18.6.2009, p. 17); Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ L 343, 23.12.2011, p. 1); Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (OJ L 94, 28.3.2014, p. 375); Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ L 157, 27.5.2014, p. 1).

In that context, the following sentence was added under Annex I, 2(h) of the Regulation:

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

This list was subsequently established by Commission Decision C (2009) 3770 of 20 May 2009. It listed additional security features to which Member States could have recourse if they so choose.

The choice and implementation of additional optional security features and the scope for interpreting the technical specifications, which are no longer specific enough due to technical developments, meant that the quality and appearance of residence permits among Member States differed greatly.

Work on a new design and security features started in 2010, when a subgroup of the committee set up under Article 6 of Regulation (EC) No 1683/95 (‘the Article 6 committee’) was established to work on this issue.

From the Commission’s point of view, this ‘new start’ was also an opportunity to explore the possibility of introducing a uniform and harmonised format and ensuring all residence permits offered the same highest possible level of security. This would help border guards and other officials recognise residence permits at first sight.

However, as explained in point 3 below, it emerged during consultations with stakeholders that a completely harmonised approach would entail very high costs for some Member States. The compromise was to maintain a list of state-of-the-art additional security features which could be added to the common uniform format if desired.

One of the main reasons for this approach is that the technical specifications adopted in 2009 require the card to be made of plastic material (like credit cards). However, the technical specifications do not define exactly which plastic material is to be used. There are different types of plastic on the market, the most suitable being polycarbonate. Currently, all cards have a structure made up of different layers using different plastic materials, even though most use polycarbonate. The production technologies for the specific plastic materials available in each Member State are also different. The range of techniques used to produce the cards means that not all proposed security features can be accommodated. As the new residence permit should be cost-neutral, it was not feasible to pursue full harmonisation further.

Member States wishing to continue with optional security features were ready to limit them to the minimum and specify the technologies to be used, location and size in the technical specifications. These would be set out in a future Commission implementing decision.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 79 of the Treaty on the Functioning of the European Union, and in particular point 2(a), applies, as it provides for ‘the conditions of entry and residence, and standards on

the issue by Member States of long-term visas and residence permits...' (ex-Article 63(3)(a) of the Treaty establishing the European Community).

Why is no recast proposed?

In principle, a third substantial amendment should trigger a recast.

However, in this instance, there are arguments which justify deviating from this rule. The main changes will apply in the Commission implementing decision setting out the secret technical specifications for the production of the new residence permit. There are no substantive changes in the enacting term of this proposed regulation; only the Annex is replaced to show the new design. There is a need for swift legislative action, as fraudsters are ahead and the residence permit needs to be made more fraud-proof. Furthermore, this regulation is of limited interest to the wider public, unlike other regulations in the area of visa policy such as the Visa Code.

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

Article 79(2)(a) TFEU empowers the European Parliament and the Council to adopt 'measures concerning standards on the issue by Member States of long-term visas and residence permits'.

The current proposal is within the limits set by those Treaty provisions, and does not alter the scope of Union legislation.

The objective of this proposal is to secure and further improve the uniform format for residence permits in the light of developments in fraudsters' practices. This objective cannot be satisfactorily achieved by the Member States acting alone because the format needs to be uniform and only the Union can amend an existing Union act.

- **Proportionality**

Article 5(4) of the Treaty on European Union states that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. The form chosen for this action must enable the proposal to achieve its objective and be implemented as effectively as possible.

The uniform format for residence permits was laid down in a regulation to ensure that it would be applied in the same way in all Member States. This proposal amends that regulation and must therefore take the form of a regulation. As to the content, this initiative is limited to improving the existing regulation. It aims to achieve the policy objective of combating irregular migration by rendering documents more difficult to counterfeit or falsify. The proposal therefore complies with the proportionality principle.

3. RESULTS OF STAKEHOLDER CONSULTATIONS

- **Stakeholder consultations and collection and use of expertise**

The subgroup of the Article 6 committee developed a requirements document which set out all the desired improvements that could be introduced into a new format. Member States agreed to contact their suppliers and to come forward with proposals. They then selected their

preferred design and common security features, which were to be built into the new residence permit. One of the requirements was that the new format be cost neutral.

During the discussions, it became clear that Member States were not in favour of a completely harmonised document. They insisted on maintaining the list of ‘updated’ additional security features, which could be added to a common ‘uniform’ format if desired. Due to the different production schemes in place, Member States did not wish to change their systems but preferred to continue with a common ‘uniform’ card with an improved level of security and an updated list of optional (national) security features. ‘Uniformity’ only meant having a uniform design and some standard security features, to which optional national security features could be added.

The cost implications for some Member States meant a compromise solution was reached. This involved keeping the possibility of additional optional security features but reducing the list to the minimum possible, depending on the impact of the security features on the uniform appearance, especially on the front side. In addition, the technical specifications (material and technologies to be used, features’ location and size, etc.) would be tightened, so that divergent interpretations would no longer be possible. This should harmonise the appearance of the card, which is important for uniformity and recognition by border guards.

The comprehensive list of optional security features will be set out in the Annex containing the technical specifications adopted by the Commission in accordance with Article 7 of this Regulation. The picture in the annex to this Regulation may therefore vary slightly on the reverse side of the residence permit depending on which optional features are used by individual Member States.

4. BUDGETARY IMPLICATIONS

The proposed amendment has no implications for the EU budget.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Detailed provisions

The amending Regulation is based on Article 79(2)(a) of the TFEU, which replaced Article 63(3)(a) TEC.

1. Participation of Denmark

In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not to be bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark must, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

2. Participation of the United Kingdom and Ireland

In accordance with the first paragraph of Article 4a of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the treaties, the provisions of that Protocol also apply to measures proposed or adopted pursuant to Title V of Part Three of the TFEU amending an existing measure by which they are bound. The United Kingdom and Ireland are bound by Regulation (EC) No 1030/2002, which would be amended under this proposal. It follows that the provisions of Protocol No 21 apply. This means that the United Kingdom and Ireland do not have to take part in the adoption of the proposed Regulation (Article 1 of Protocol No 21). However, under Article 3 of Protocol No 21, they may notify the Council within three months after the proposal has been presented that they wish to take part in the adoption and application of this measure.

Article 4 of Protocol No 21 also applies, giving the United Kingdom and Ireland the option of accepting the measure once it has been adopted by the European Parliament and the Council.

To take into account the choices to be made by the United Kingdom and Ireland in the three months following the adoption of the proposal, six possible recital texts are provided in square brackets. One or two of these will be selected as the appropriate one(s) by the European Parliament and the Council, on the basis of the choices made by the United Kingdom and Ireland in the three months following the adoption of the proposal.

3. Development of the Schengen *acquis* in the sense of the association agreements

Regulation (EC) No 1030/2002 is part of the Schengen *acquis* applicable to Norway, Iceland, Switzerland and Liechtenstein on the basis of their respective association agreements. The proposed amendment should therefore also apply to those associated countries.

4. Enacting terms

Article 1

This provision states that the Annex to Regulation (EC) 1030/2002 is to be replaced by the new Annex, containing the image and the general description of the new residence permit.

Article 2

To allow existing stocks to be used up, provision is made for a transitional period of six months during which Member States can still use the old residence permits.

Article 3

Firstly, there is the usual provision for the entry into force of the Regulation.

Secondly, it is provided that Member States must introduce the new residence permits nine months after the Commission adopts an implementing decision on the supplementary technical specifications.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals

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 79 (2) (a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 1030/2002 lays down a uniform format for residence permits for third-country nationals.
- (2) The current uniform format for residence permits, which has been in circulation in its current lay-out since 1997, is to be considered as compromised in view of serious incidents of counterfeiting and fraud.
- (3) Therefore a new common design for residence permits for third-country nationals should be established with more modern security features in order to render the residence permits more secure and prevent forgery.
- (4) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption of this Regulation, and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the European Parliament and the Council have adopted this Regulation, whether it will implement it in its national law.
- (5) [In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]

- (6) [In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]
- (7) [In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]
- (8) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation.]
- (9) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of...,) its wish to take part in the adoption and application of this Regulation.]
- (10) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of...,) its wish to take part in the adoption and application of this Regulation.]
- (11) This Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, of Article 4(1) of the 2005 Act of Accession and of Article 4(1) of the 2011 Act of Accession.
- (12) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*² which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC.³
- (13) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the

² OJ L 176, 10.7.1999, p. 36.

³ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application 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* (OJ L 176, 10.7.1999, p. 31).

European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*,⁴ which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC.⁵

- (14) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*,⁶ which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU.⁷
- (15) To allow for using up existing stocks of residence permits, a transitional period should be foreseen within which Member States can still use the old residence permits.
- (16) Regulation (EC) No 1030/2002 should therefore be amended as follows,

HAVE ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1030/2002 is replaced by the text in the Annex to this Regulation.

Article 2

Residence permits conforming to the specifications set out in the annex to Regulation (EC) No 1030/2002 which are applicable until the date referred to in the second subparagraph of Article 3 may be used for residence permits issued until six months after that date.

Article 3

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

⁴ OJ L 53, 27.02.2008, p. 52.

⁵ Council Decision 2008/903/EC of 27 November 2008 on the full application of the provisions of the Schengen *acquis* in the Swiss Confederation (OJ L 53, 27.2.2008, p. 1).

⁶ OJ L 160, 18.6.2011, p. 21.

⁷ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

It shall apply from twelve months after the adoption of the further technical specifications referred to in Article 2 of Regulation (EC) No 1030/2002.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President