

**STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION
LEGISLATION AND DOCUMENTS**

Council number 8175/18
COM(2018) 212 final

Council number 8175/18 ADD 1
SWD(2018) 110 final

Council number 8175/18 ADD 2
SWD(2018) 111 final

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

Accompanying Commission Staff Working Document Impact Assessment

Accompanying Commission Staff Working Document Executive Summary of the Impact Assessment

Submitted by the Home Office on 10th May 2018

SUBJECT MATTER

1. Against a background of tackling terrorism and organised crime, and initiatives taken to reinforce the management of the external EU border, such as the recent introduction of systematic Schengen checks, the European Commission is proposing a Regulation to strengthen the security of national identity cards, residence documents issued to EU citizens and residence cards issued to non-EU family members of an EU citizen.
2. The proposal is part of an action plan to strengthen the European response to travel document fraud, published by the Commission in December 2016. In the context of recent terrorist attacks in Europe, and following on from 2005 Council Conclusions on minimum standards for the issuance of identity cards, the Commission identified actions to address document security which were endorsed by Council Conclusions adopted on 27 March 2017. Furthermore, the Commission underlined the need for secure travel and identity documents in a 2016 Communication and committed to considering policy options in a 2017 Citizenship report. The proposal is also included in the European Commission 2018 Work Programme as a legislative initiative foreseen for adoption in 2018 under the regulatory fitness and performance (REFIT) platform.
3. Member States issue and renew identity cards or passports to their nationals in accordance with national laws. Where Member States decide to require Union citizens and their family members to register with the relevant authorities, registration certificates must be issued under the conditions set out in Directive 2004/38/EC) and Member States are also required to issue residence cards to

family members who are not EU nationals and, on application, to issue documents certifying permanent residence and permanent residence cards.

4. EU standards have been introduced for passports, travel documents, visas and various permits, including residence permits for third country nationals, but there are no set standards on the format and security of Member States' identity cards or residence documents issued in accordance with Directive 2004/38/EC (the Free Movement Directive)¹. This means they vary significantly, increasing the risk of falsification and document fraud, as well as making recognition of a genuine document more difficult and hindering free movement.
5. 26 EU Member States issue identity cards to their nationals and they are compulsory in 15 Member States. Under the Free Movement Directive, identity cards can be used by EU citizens as travel documents to enter the EU, travel within the EU and to establish their identity when exercising their right to reside in another EU country. Some Member States have agreements with third countries allowing their nationals to travel on their EU identity cards.
6. In addition, the Free Movement Directive provides for EU citizens and their non-EU family members to be able to prove their residence in a Member State by way of a residence document. This is not a travel document but when used in conjunction with a passport a non-EU family member of an EU national can enter the EU without a visa when accompanying or joining that EU national.
7. Many of the EU's security measures depend on secure travel and identity documents; such as the systematic checks mentioned above and the proposed interoperability of EU border, visa, security, asylum and migration information systems. It is therefore necessary to ensure the security of these documents is robust in order to improve security within the EU and at its borders, and protect the free movement of persons.
8. To achieve this aim, it is proposed to standardise the cards, include biometric identifiers (facial image and fingerprints) for identity cards and phase out documents with weak security features within five years of the Regulation becoming operational.
9. Chapter I sets out the scope of the proposed regulation as concerning all documents linked to the exercise of free movement by EU citizens and their family members; namely national identity cards which allow holders 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.
10. For identity cards, Chapter II draws on the International Civil Aviation Organization (ICAO)'s specifications for machine readable travel documents which ensure global interoperability. It is proposed that they are produced in ID-1 format [UK driving licence size], comply with the minimum security standards set out in ICAO Document 9303 (Seventh edition, 2015) and include a storage medium [contactless chip] containing a facial image and two fingerprints of the holder. Requirements for collecting biometric data are set out but children under 12 and people who cannot

¹ Except that the Free Movement Directive specifies that residence cards for non-EU family members of an EU citizen must state 'residence card of a family member of a Union citizen' and, in 2008, Member States expressed their will to follow the same format for these as is set out for residence permits for third country nationals, with several following through on this non-legally binding commitment.

provide fingerprints will be exempt from the fingerprint requirement. They should state 'Identity card' in specified languages, have a maximum validity of ten years and those that do not meet the requirements of the proposal would be phased out on their expiry date or five years after the Regulation comes into operation (two years for non-machine readable cards), whichever is earlier.

11. For a residence document issued to an EU citizen living in another Member State, Chapter III specifies that it must, as a minimum, be clear that it is issued in accordance with Directive 2004/38/EC and state the title in specified languages as well as the number, the name and date of birth of the holder and the date and place of issue.
12. For a residence card issued to a non-EU family member of an EU citizen, Chapter IV specifies the same format as the latest provisions for a residence permit for a third country national (Council Regulation (EC) 1030/2002 as amended by Regulation (EU) 2017/1954), except for clearly indicating it is issued in accordance with Directive 2004/38/EC and bearing the title 'Residence card of a family member of a Union citizen' or 'Permanent residence card of a family member of a Union citizen' accordingly, with the option of adding the respective standardised code 'Art 10 DIR 2004/38/EC' or 'Art 20 DIR 2004/38/EC'. Those that do not meet the requirements of the proposal would be phased out on their expiry date or five years after the Regulation comes into operation (two years for older style cards), whichever is earlier.
13. Chapter V sets out common provisions for the three types of documents, including that contact points for implementation will be established in each Member State, that Regulation (EU) 2016/679 [the General Data Protection Regulation] will apply and holders will be made aware of the data held in the contactless chip, that there will be a programme for monitoring the outputs, results and impacts and that reporting and evaluation will be undertaken by the Commission. The Regulation would enter into force the day after its publication in the Official Journal of the European Commission and become operational 12 months later.

SCRUTINY HISTORY

14. No previous scrutiny history.

MINISTERIAL RESPONSIBILITY

15. The Home Secretary has responsibility for policy on immigration issues.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

16. The Home Secretary retains overall responsibility for immigration control in the United Kingdom, which is a reserved matter under the UK's devolution settlement. We are not aware of any direct impact on the areas of responsibility of the Devolved Administrations. However, they have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

- i. Legal basis

The proposal is based on Article 21 of the Treaty on the Functioning of the European Union (TFEU).

ii. European Parliament Procedure

Ordinary legislative procedure.

iii. Voting procedure

Qualified majority voting.

iv. Impact on United Kingdom Law

None. The measure 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 that are outside the scope of Union law. It also does not affect the use of identity cards and residence documents with eID function (which helps citizens moving to another Member State to be recognised for other purposes such as access to public services due to Union-wide mutual recognition of electronic identifications).

v. Application to Gibraltar

The measure will impact upon Gibraltar. Assuming that Gibraltar wishes to maintain their identity card system, they will need to ensure that their identity cards are compliant with the proposed Regulation. At present, Gibraltar's identity cards do not contain an ICAO-compliant biometric chip.

vi. Fundamental rights analysis

This proposal positively affects the fundamental right of freedom of movement and of residence under Article 45 of the Charter of Fundamental Rights of the European Union (the Charter) by addressing shortfalls in the recognition and security elements of identity cards and residence documents.

Due to the collection, use and processing of personal data, including biometric data, there is the potential for an impact 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, and must be justified. With regards to the right to the protection of personal data, the General Data Protection Regulation (2016/679) applies and clear rules, conditions and safeguards will be implemented by Member States. The inclusion of biometric data will be implemented with specific safeguards in line with those in place for passports, other travel documents and residence permits. The procedure for taking fingerprints and a facial image would take into account the specific needs of children and be applied in accordance with the safeguards laid down in Article 24 of the Charter, in the Convention for the Protection of Human

APPLICATION TO THE EUROPEAN ECONOMIC AREA

17. The measure will be applicable to the EEA. We are unclear whether Switzerland will be required, or may choose, to adopt this Directive.

SUBSIDIARITY

18. The proposal complies with the principle of subsidiarity, as a common approach would be better achieved through action at EU level than by Member States acting alone.

POLICY IMPLICATIONS (including Exit implications where appropriate)

19. On 23 June 2016, the EU referendum was held and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.
20. The UK does not issue identity cards so we would not be bound by the associated proposals in Chapter II. Documents issued by the UK covered by Chapter III (residence documents for Union citizens) already conform to the proposed standards. In respect of documents covered by Chapter IV (residence cards for family members who are not nationals of a Member State), we already issue secure documents to these individuals using the current format for a Biometric Residence Permit. Whether or not the UK will be bound by this part of the proposal is dependent on negotiations around the implementation period which is due to end 31 December 2020, with a grace period of a further six months. The soonest the Regulation as drafted could be operational is late 2019, with non-compliant documents phased out by late 2024.
21. The measure would impact upon Gibraltar, assuming that they wish to maintain their identity card system. They will need to ensure that their identity cards are compliant with the proposed Regulation; at present Gibraltar's identity cards are not compliant in that they do not contain an ICAO-compliant biometric chip. We are exploring what this might entail for Gibraltar. Complying with the draft Regulation would also mean complying with the agreed terms of the Withdrawal Agreement for post-2025 as, from that date, it is open to the UK and the EU to only accept identity cards that have 'a chip compliant with the applicable ICAO standards related to biometric identification'. If the Regulation as drafted becomes operational as expected, all EU identity cards will meet this requirement by 2025.
22. The UK has long been supportive of measures taken to strengthen the external EU border and of introducing more secure travel documents and identity cards.

CONSULTATION

23. The proposal states that the Commission carried out a public consultation and targeted consultations of stakeholder groups.

IMPACT ASSESSMENT

24. The Commission has produced an Impact Assessment concluding that improved acceptance of documents and enhanced document security will yield direct savings and a reduced administrative burden for citizens and their family members, public administrations and public and private service operators and that indirect benefits will include a reduction in document fraud and identity theft and an improved level of security within the EU and at its borders. The Government has no reason to disagree with this assessment.

FINANCIAL IMPLICATIONS

25. The Commission states that there will be a cost involved in bringing in the upgraded documents and which will vary between Member States depending on the quality of the documents they currently issue. In most cases, costs will be minimised by aligning the new requirements with the natural replacement cycle of documents. Infrastructure already exists for some production processes and significant additional costs are not expected.

TIMETABLE

26. The Regulation as drafted would enter into force the day after its publication in the Official Journal of the European Commission and become operational 12 months later. The proposal is reasonably likely to be negotiated before the end of this calendar year and become therefore become operational during the implementation period.

A handwritten signature in black ink, appearing to read 'Caroline Nokes', followed by a stylized flourish or second signature.

Rt. Hon. Caroline Nokes
Minister for Immigration
Home Office