Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994

REGULATION (EU) 2016/1953 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 October 2016

on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994

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)(c) 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[(1)],

Whereas:

(1) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, with full respect for their fundamental rights, in particular for the principle of non-refoulement, and in compliance with Directive 2008/115/EC of the European Parliament and of the Council[(2)], is an essential part of the comprehensive efforts to ensure the credibility and the proper and effective functioning of the Union migration policy and to reduce and deter irregular migration.

(2) The national authorities of the Member States experience difficulties in returning illegally staying third-country nationals who possess no valid travel documents.

(3) Improving cooperation on return and readmission with the main countries of origin and transit of illegally staying third-country nationals is essential for increasing rates of return, which are unsatisfactory. An improved European travel document for the return of illegally staying third-country nationals is relevant in that regard.

(4) The current standard travel document for the return of third-country nationals, established by the Council Recommendation of 30 November 1994[(3)], is not widely accepted by authorities of third countries, for reasons including its inadequate security standards.

(5) It is therefore necessary to promote the acceptance by third countries of an improved and uniform European travel document for the return of illegally staying third-country nationals as the reference document for return purposes.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2016/1953 of the European Parliament and of the Council. (See end of Document for details)*

(6) A more secure and uniform European travel document for the return of illegally staying third-country nationals (European travel document for return) should be established to facilitate the return and readmission of third-country nationals staying illegally on the territory of the Member States. The enhanced security features and technical specifications of the European travel document for return should facilitate its recognition by third countries. That document should therefore facilitate the carrying out of returns in the context of readmission agreements or other arrangements concluded by the Union or by the Member States with third countries, as well as in the context of return-related cooperation with third countries not covered by formal agreements.

(7) The readmission of own nationals is an obligation under international customary law, with which all States are required to comply. The identification of illegally staying third-country nationals and the issuance of documents including the European travel document for return should, where appropriate, be subject to cooperation with diplomatic representations and negotiations with third countries entering into readmission agreements, either with the Union or with the Member States.

(8) Readmission agreements concluded by the Union with third countries should seek the recognition of the European travel document for return. Member States should seek the recognition of the European travel document for return in bilateral agreements and other arrangements as well as in the context of return-related cooperation with third countries not covered by formal agreements. Member States should make efforts to ensure the effective use of the European travel document for return.

(9) The European travel document for return should contribute to reducing the administrative and bureaucratic burdens on the administrations of Member States and third countries, including consular services, and the length of the administrative procedures necessary for ensuring the return and readmission of illegally staying third-country nationals.

(10) This Regulation should only harmonise the format, security features and technical specifications of the European travel document for return and should not harmonise the rules concerning its issuance.

(11) The content and technical specifications of the European travel document for return should be harmonised in order to ensure high technical and security standards, in particular as regards safeguards against counterfeiting and falsification. The European travel document for return should bear recognisable harmonised security features. The security features and technical specifications set out in Council Regulation (EC) No 333/2002[(4)] should therefore be applied to the European travel document for return.

(12) In order to amend certain non-essential elements of the model for the European travel document for return, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(5)]. In particular, to

ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(13) With regard to the processing of personal data within the framework of this Regulation, the competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC of the European Parliament and of the Council[(6)].

(14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union (TEU) and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds, to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399 of the European Parliament and of the Council[(7)], upon the Schengen *acquis*, Denmark shall, 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.

(15) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399, this Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[(8)]; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Moreover, in accordance with Articles 1 and 2 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 TEU and to the TFEU, 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 or subject to its application.

(16) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399, this Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[(9)]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Moreover, in accordance with Articles 1 and 2 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 TEU and to the TFEU, 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 or subject to its application.

(17) As regards Iceland and Norway, this Regulation constitutes, to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399, a development of the 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 latters' association with the implementation, application and

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2016/1953 of the European Parliament and of the Council. (See end of Document for details)*

development of the Schengen *acquis*[10], which fall within the area referred to in Article 1 of Council Decision 1999/437/EC[11].

(18) As regards Switzerland, this Regulation constitutes, to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399, a development of the provisions of the Schengen *acquis* within the meaning of 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*[12], which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[13].

(19) As regards Liechtenstein, this Regulation constitutes, to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399, a development of the provisions of the Schengen *acquis* within the meaning 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*[14], which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[15].

(20) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the effects of the envisaged action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. 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.

(21) In order to establish uniform conditions and ensure clarity of concepts, it is appropriate to adopt this act in the form of a regulation.

(22) Member States should respect their respective obligations under international and Union law, notably the Charter of Fundamental Rights of the European Union, in particular the protection in the event of removal, expulsion or extradition provided for in Article 19 and the duty referred to in Article 24(2).

(23) The Council Recommendation of 30 November 1994 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes a uniform European travel document for the return of illegally staying third-country nationals (European travel document for return), in particular its format, security features and technical specifications.

***Changes to legislation:** There are currently no known outstanding effects for the Regulation (EU) 2016/1953 of the European Parliament and of the Council. (See end of Document for details)*

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'third-country national' means a third-country national as defined in point 1 of Article 3 of Directive 2008/115/EC;

(2) 'return' means return as defined in point 3 of Article 3 of Directive 2008/115/EC;

(3) 'return decision' means return decision as defined in point 4 of Article 3 of Directive 2008/115/EC.

Article 3

European travel document for return

1 The format of the European travel document for return shall correspond to the model set out in the Annex. The European travel document for return shall contain the following information:

a the name, surname, date of birth, sex, nationality, distinguishing marks and, if known, the address in the third country of return of the third-country national;

b a photograph of the third-country national;

c the issuing authority, date and place of issue and period of validity;

d information about the departure and arrival of the third-country national.

2 The European travel document for return shall be issued in one or more official languages of the Member State that issues the return decision and, where appropriate, shall also be provided in English and French.

3 The European travel document for return shall be valid for a single journey up until the time of arrival in the third country of return of the third-country national subject to a return decision issued by a Member State.

4 Where applicable, additional documents necessary for the return of third-country nationals may be attached to the European travel document for return.

5 The Commission is empowered to adopt delegated acts in accordance with Article 6 in order to amend the format of the European travel document for return.

Article 4

Technical specifications

1 The security features and technical specifications of the European travel document for return shall be those set out in Article 2 of Regulation (EC) No 333/2002.

2 Member States shall forward to the Commission and to the other Member States a specimen of the European travel document for return drawn up in accordance with this Regulation.