Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States

[[X1]REGULATION (EC) No 444/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 May 2009

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

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,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(1)],

Whereas:

(1) The European Council meeting in Thessaloniki on 19 and 20 June 2003 confirmed that a coherent approach is needed in the EU on biometric identifiers or biometric data for documents for third-country nationals, EU citizens' passports and information systems (VIS and SIS II).

(2) In this context, the Council has adopted Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States[(2)], which represents an important step towards the use of new elements which render passports and travel documents more secure and establish a more reliable link between the holder and the passport or travel document, thus making an important contribution to ensuring that passports and travel documents are protected against fraudulent use.

(3) Regulation (EC) No 2252/2004 provides for a general obligation to provide fingerprints which will be stored on a contactless chip in the passport or travel document. However, experience from tests showed that exceptions are needed. During pilot projects in 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 significant changes which make it difficult to check them during the entire period of validity of the passport or travel document.

(4) The harmonisation of exceptions to the general obligation to provide fingerprints is essential in order to maintain common security standards and with a view to simplifying border controls. Both for legal and security reasons it should not be left to national legislation to define the exceptions to the obligation to provide fingerprints in passports and travel documents issued by Member States.

(5) Regulation (EC) No 2252/2004 requires biometric data to be collected and stored in the storage medium of passports and travel documents with a view to issuing such documents. This is without prejudice to any other use or storage of these data in accordance with national legislation of Member States. Regulation (EC) No 2252/2004 does not provide a legal base for setting up or maintaining databases for storage of those data in Member States, which is strictly a matter of national law.

(6) 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.

(7) Taking into account the fact that the Member States will be obliged to issue individual passports to minors and that there might be significant differences between the Member States' legislation regarding children crossing the external borders of the Member States, the Commission should examine the need for measures to ensure a common approach regarding the rules for the protection of children crossing the external borders of the Member States.

(8) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. 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.

(9) 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 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* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.

(10) 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*[(3)]. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(11) 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*[(4)]. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(12) 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 latter's association with the implementation, application and development of the Schengen *acquis*[(5)], 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[(6)].

(13) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of 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*[(7)], which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/146/EC[(8)] and 2008/149/JHA[(9)].

(14) As regards Liechtenstein, this Regulation constitutes a development of 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 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*, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC[(10)].

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

HAVE ADOPTED THIS REGULATION:

Editorial Information

X1 Substituted by Corrigendum to Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States (Official Journal of the European Union L 142 of 6 June 2009).

Article 1

Regulation (EC) No 2252/2004 is hereby amended as follows:

1. In Article 1, paragraphs 1 and 2 shall be 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.

The Commission shall present a report on the requirements for children travelling alone or accompanied, crossing the external borders of the Member States not later than 26 June 2012 and propose, if necessary, appropriate initiatives in order to ensure

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EC) No 444/2009 of the European Parliament and of the Council. (See end of Document for details)*

a common approach regarding the rules for the protection of children crossing the external borders of the Member States.

2 Passports and travel documents shall include a highly secure storage medium which shall contain a facial image. Member States shall also include two fingerprints taken flat in interoperable formats. The data shall be secured and the storage medium shall have sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data.

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

a Children under the age of 12 years.

The age limit of 12 years is provisional. The report referred to in Article 5a shall contain a review of the age limit, if necessary accompanied by a proposal to amend the age limit.

Without prejudice to the consequences of the application of Article 5a, Member States which, in their national law adopted before 26 June 2009, provide for an age limit below 12 years may apply that limit during a transitional period until 4 years after 26 June 2009. However, the age limit during the transitional period may not be below 6 years of age;

b persons, where fingerprinting is physically impossible.

2b Where fingerprinting of the designated fingers is temporarily impossible, Member States shall allow the fingerprinting of the other fingers. Where it is also temporarily impossible to take fingerprints of any of the other fingers, they may issue a temporary passport having a validity of 12 months or less.;

2. The following Article shall be inserted:

Article 1a

1 The biometric identifiers shall be taken by qualified and duly authorised staff of the national authorities responsible for issuing passports and travel documents.

2 Member States shall collect biometric identifiers from the applicant in accordance with the safeguards laid down in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child. Member States shall ensure that appropriate procedures guaranteeing the dignity of the person concerned are in place in the event of there being difficulties in enrolling.;

3. Article 2 shall be replaced by the following:

Article 2

Additional technical specifications in accordance with international standards, including in particular the recommendations of the International Civil Aviation Organisation (ICAO), for passports and travel documents relating to the following shall be established in accordance with the procedure referred to in Article 5(2):

(a) additional security features and requirements, including enhanced anti-forgery, counterfeiting and falsification standards;

(b) technical specifications for the storage medium of the biometric features and their security, including prevention of unauthorised access;