Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals

COUNCIL REGULATION (EC) No 380/2008

of 18 April 2008

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Whereas:

(1) The Amsterdam Treaty aims to establish progressively an area of freedom, security and justice and confers the right of initiative on the Commission in order to take the relevant measures on a harmonised immigration policy.

(2) It is essential that the uniform format for residence permits should contain all the necessary information and meet very high technical standards, in particular as regards safeguards against counterfeiting and falsification. This will contribute to the objective of preventing and fighting against illegal immigration and illegal residence. It must also be suited to use by all the Member States.

(3) The integration of biometric identifiers is an important step towards the use of new elements, which establish a more reliable link between the holder and the residence permit as an important contribution to ensuring that it is protected against fraudulent use. The specifications set out in the International Civil Aviation Organisation (ICAO) document No 9303 Part 3 on Size 1 and 2 machine readable official documents should be taken into account.

(4) Furthermore, the vast majority of Member States apply the principle of one person one document, which enhances security even further. It should be examined whether this principle should be rendered mandatory.

(5) At its meeting in Thessaloniki on 19 and 20 June 2003, the European Council stressed that a coherent approach was needed in the EU on biometric identifiers or biometric data, which would result in harmonised solutions for documents for third country nationals, EU citizens' passports and information systems.

(6) The use of new technologies such as e-government and digital signature for access to e-services should be facilitated by giving Member States the possibility to use the storage

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medium used for the incorporation of biometric identifiers or an additional storage medium for that purpose in residence permits.

(7) The purpose of this Regulation is solely to set the security features and biometric identifiers to be used by the Member States in a uniform format of residence permit for third-country nationals.

(8) This Regulation only lays down specifications that are not secret; these specifications need to be supplemented by further specifications which may remain secret in order to prevent counterfeiting and falsifications and which may not include personal data or references to such data. Powers to adopt such supplementary specifications should be conferred on the Commission, which should be assisted by the Committee established by Article 6 of Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas[(2)].

(9) With regard to the personal data to be processed in the context of the uniform format for residence permits, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(3)] applies. It must be ensured that no further information is stored on the uniform format for residence permits unless provided for in Council Regulation (EC) No 1030/2002[(4)], its Annex or unless it is mentioned in the relevant travel document.

(10) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing biometric identifiers in interoperable formats to lay down rules for all Member States implementing the Schengen Convention. 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.

(11) 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 establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is therefore 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 should, in accordance with Article 5 of that Protocol, decide within a period of six months after the adoption of this Regulation, whether it will implement it in its national law.

(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 association of those two States with the implementation, application and development of the Schengen *acquis*[(5)] which fall within the area referred to in Article 1, point C of Council Decision 1999/437/EC[(6)] on certain arrangements for the application of that Agreement.

(13) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing

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the European Community, the United Kingdom gave notice, by letter of 29 December 2003, of its wish to take part in the adoption and application of this Regulation.

(14) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland gave notice, by letter of 19 December 2003, of its wish to take part in the adoption and application of this Regulation.

(15) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point C of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/860/EC[7],

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1030/2002 is hereby amended as follows:

1. Article 1 shall be amended as follows:

   (a) in paragraph 1, the second sentence shall be replaced by the following:

   ‘Residence permits to third-country nationals shall be issued as stand-alone documents in ID 1 or ID 2 format.’;

   (b) paragraph 2(a) shall be amended as follows:

      (i) point (ii) shall be replaced by the following:

         (ii) permits issued pending examination of a request for asylum, an application for a residence permit or an application for its extension;;

      (ii) the following point shall be inserted:

         (iia) permits issued in exceptional circumstances with a view to an extension of the authorised stay with a maximum duration of one month;;

2. the following points shall be added to Article 2(1):

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

   (e) requirements for the quality of and common standards for the facial image and the fingerprint images;

   (f) an exhaustive list of additional national security features which could be added by Member States in accordance with point (h) of the Annex.;

3. in Article 3, the first paragraph shall be replaced by the following:

   In accordance with the procedure referred to in Article 7(2), it may be decided that the specifications referred to in Article 2 shall be secret and not be published. In

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that case they shall be made available only to the bodies designated by the Member States as responsible for the printing and to persons duly authorised by a Member State or the Commission.;

4. in Article 4, the second paragraph shall be replaced by the following:

No information in machine-readable form shall be included on the resident permit or on the storage medium of the residence permit referred to in Article 4a, unless provided for in this Regulation, or its Annex or unless it is mentioned in the related travel document by the issuing State in accordance with its national legislation. Member States may also store data for e-services such as e-government and e-business as well as additional provisions relating to the residence permit on a chip referred to in point 16 of the Annex. However, all national data must be logically separated from the biometric data referred to in Article 4a.

For the purposes of this Regulation, the biometric features in residence permits shall only be used for verifying:

(a) the authenticity of the document;

(b) the identity of the holder by means of directly available comparable features when the residence permit is required to be produced by national legislation.;

5. the following Articles shall be inserted:

Article 4a

The uniform format for residence permits shall include a storage medium containing the facial image and two fingerprint images of the holder, both in interoperable formats. The data shall be secured and the storage medium shall be of sufficient capacity and capability to guarantee the integrity, authenticity and confidentiality of the data.

Article 4b

For the purposes of this Regulation, Member States shall take biometric identifiers comprising the facial image and two fingerprints from third-country nationals.

The procedure shall be determined in accordance with the national practice of the Member State concerned and with the safeguards laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

The following biometric identifiers shall be taken:

— a photograph provided by the applicant or taken at the time of application and,

— two fingerprints taken flat and digitally captured.

The technical specifications for the capture of biometric identifiers shall be set out in accordance with the procedure described in Article 7(2) and with ICAO standards and the technical specifications for passports issued by Member States to their nationals pursuant to Council 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[8].

The capture of fingerprints is compulsory as of six years of age.

Persons for whom fingerprinting is physically impossible shall be exempt from the requirement to give fingerprints.;

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6. the following Article shall be inserted:

Article 5a

Where Member States use the uniform format for purposes other than those covered by this Regulation, appropriate measures must be taken to ensure that confusion with the residence permit referred to in Article 1 is not possible and the purpose is clearly indicated on the card.;

7. in Article 9, the third paragraph shall be replaced by the following:

The storage of the facial image as primary biometric identifier shall be implemented at the latest two years, and the storage of the two fingerprint images at the latest three years, after the adoption of the respective technical measures provided for in Article 2(1)(d) and (e).

However, the validity of residence permits already issued shall not be affected by the implementation of this Regulation, unless the Member State concerned decides otherwise.

For a transitional period of two years after the adoption of the technical specifications for the facial image referred to in the third paragraph of this Article, the residence permit may continue to be issued in sticker form.;

8. the Annex shall be amended in accordance with Annex I to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following 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.

Done at Luxembourg, 18 April 2008.

For the Council

The President

D. MATE