Visas: collection of biometric identifiers, organisation of the reception and processing of visa applications, organisation of Member States consular offices for the implementation of the Visa Information System VIS

2006/0088(COD) - 05/03/2009 - Council position

The Council welcomes the spirit of cooperation which prevailed with the European Parliament during the negotiations. The text of the common position reflects a compromise reached during the discussions between the European Parliament, the Commission and the Council and can be summarised as follows:

- **fingerprinting age**: the proposal of the Commission provided that for the purpose of visa applications, fingerprints should be taken from children from the age of **six years**. However, the European Parliament did not agree with this approach, and, by way of compromise, the text provides as a first step that fingerprints are taken only from the age of **twelve years**. The Commission shall present, three years after the VIS is brought into operation and every four years thereafter, a report on the implementation of the Regulation. The first report shall address the issue of the sufficient reliability for identification and verification purposes of fingerprints of children below the age of 12 years, and in particular how fingerprints evolve with age, based on the results of a study carried out under the responsibility of the Commission;
- cooperation with ESP ("outsourcing"): the aim of the proposal from the Commission is in particular to create a common legal framework for "outsourcing", a form of organisation already practiced by several Member States. The Commission has indicated in its proposal that a common legal framework is necessary taking into account in particular data protection requirements. "Outsourcing" is not proposed as a general solution but as a possibility which may be used in certain diplomatic missions or consular posts depending on the local situation. An important benefit of setting up a legal framework is that it becomes clear that the Member States remain the "controller" and the ESP the "processor" in the meaning of Article 16 and 17 of Directive 95/46/EC on data protection. In this sense, the contractual terms with the ESP must contain the obligations for the processing of data in the sense of the directive. The provisions of the common position provide that only in **particular circumstances** or for reasons relating to the local situation (high number of applicants or territorial coverage of the third country concerned) and only where the other forms of cooperation prove not to be appropriate, a Member State may, as a last resort, cooperate with an ESP;
- **additional fees (service fees)**: the Commission states in the explanatory memorandum to its proposals that, when using the possibility of outsourcing, the total amount of fees charged to the applicant for processing the visa application shall not be higher than the normal visa fee (the fee set out in Annex 12 to the CCI). Thus, no additional costs could be charged to the applicant. This approach was supported by the European Parliament in its opinion. However, the Council was not able to agree to that. By way of compromise, the common position provides that the ESP may charge a service fee in addition to the normal visa fee, but that this **service fee shall not exceed half of the amount of the normal visa fee**, irrespective of the possible exemptions from the visa fee;
- **transfer of data**: in order to ensure that all relevant data protection provisions are respected, the proposal from the Commission provides for data protection and security rules when a transfer of data occurs between two Member States in the framework of "limited representation" (see Article 1 (1) of the proposal) and between a Member State and an ESP in the case of outsourcing. Therefore,

Member States have to ensure that the contract to be concluded with the ESP includes relevant data protection clauses, the implementation of which shall be supervised by consular officers. Member States in this regard remain liable for the compliance with data protection rules also in case of outsourcing. Based on concerns expressed by the European Parliament, the common position reinforces the provisions relating to the safety of the transfer of data between, on the one hand, the representing Member State and the represented Member State and, on the other hand, between the Member State and the ESP concerned.

It should be noted that this text was the subject of discussion between the institutions, the Chair of the LIBE committee of the European Parliament has since in a letter to the Chairman of Coreper indicated that if the compromise text is transmitted to the European Parliament as a common position of the Council, he will recommend to the Members of the LIBE and subsequently to the plenary that the **common position be accepted without amendments in Parliament's second reading**, subject to verification by the lawyer linguists of both institutions.