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) - 23/04/2009 - Final act

PURPOSE: to create the necessary legal basis to enable Member States to organise the reception and processing of visa applications in relation to the introduction of biometric data into the Visa Information System (VIS) and to organise this type of activity within their diplomatic missions and consular posts.

LEGISLATIVE ACT: Regulation (EC) No 390/2009 of the European Parliament and of the Council of 23 April 2009 amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications.

BACKGROUND: the setting up of the VIS is governed by several texts which define its general legal framework:

1. the first text establishes the legal basis for the creation of the VIS and authorises the Commission to develop it and make Community funds available to that end (see CNS/2004/0029: Council Decision 2004/512/EC);
2. the second text establishes the technical framework for the creation of the VIS and for the exchange of data between Member States (see COD/2004/0287: Regulation (EC) No 767/2008) and provides the legal framework for the gathering and use of data by the authorities responsible for visas, including biometric identifiers;
3. in order to complete the final creation of the VIS, a **third instrument** is needed to define the standards to be applied by the consular offices of the Member States so as to comply with the technical instructions of the VIS. To that end, it is necessary to amend the Common Consular Instructions with which the consular offices of the Member States currently comply, above all for the application of new rules concerning the gathering of data and its introduction into visas. That is the objective of this Regulation.

CONTENT: the Regulation is intended to create the legal basis for Member States to:

- take mandatory biometric identifiers - the facial image and ten flat fingerprints - from visa applicants;
- establish a legal framework for the organisation of Member States' consular offices with a view to the implementation of the Visa Information System (VIS)

Biometric identifiers: the Regulation defines the standards for the collection of these biometric identifiers by referring to the relevant provisions set out by the International Civil Aviation Organisation (ICAO). Member States shall collect biometric identifiers comprising the facial image and 10 fingerprints from the applicant in accordance with the safeguards laid down in the European Convention for the Protection of

Human Rights and Fundamental Freedoms, in the Charter of Fundamental Rights of the EU and in the United Nations Convention on the Rights of the Child. No further technical specifications are required in order to ensure interoperability.

The biometric identifiers shall be collected by **qualified and duly authorised staff** of the diplomatic mission or consular post and the authorities responsible for issuing visas at the borders. The data shall be entered in the VIS only by duly authorised consular staff and in compliance with the rules of courtesy and the human dignity of the applicants.

Derogations to the introduction of biometric identifiers in visas: as requested by the European Parliament, certain applicants shall be exempt from the requirement to give fingerprints, namely:

- **children under the age of 12**;
- persons for whom fingerprinting is physically impossible.

The age limit of 12 years shall however be reviewed following the results of a study that the Commission shall subsequently present three years following the creation of the VIS.

In order to facilitate the procedure of any subsequent application, it should be possible to copy fingerprints from the first entry into the VIS within a period of 59 months. Once this period of time has elapsed, the fingerprints should be collected again.

Cooperation between Member States: in order to facilitate the registration of applicants and to reduce the costs for Member States, the Regulation sets out new organisational possibilities between the consular offices of the Member States. Firstly, a number of new Common Consular Instructions are set out in order to authorise diplomatic missions and consular posts to **represent one or more other Member States** in a limited manner solely for the collection of applications and the enrolment of biometric identifiers.

Other possibilities for cooperation are also provided for, such as:

- the co-location of diplomatic and consular posts;
- the creation of Common Application Centres;
- recourse to honorary consuls;
- cooperation with external service providers.

External service providers: the Regulation contains provisions for situations in which Member States decide, in order to facilitate the procedure, to cooperate with an external service provider for the **collection of applications**. Such a decision may be taken if, in particular circumstances or for reasons relating to the local situation, cooperation with other Member States in the form of limited representation, co-location or a Common Application Centre proves not to be appropriate for the Member State concerned. Such arrangements should be established in compliance with the general principles for issuing visas, respecting the data protection requirements. In this context, provisions have been added in an annex to establish a list of minimum requirements in the case of cooperation with external service providers. Those requirements include provisions on the exact responsibilities of external service providers, on direct and total access to their premises, information for applicants, confidentiality and on the circumstances, conditions and procedures for suspending or terminating the cooperation.

Organisation of visa sections: the Regulation contains specific provisions for organising visa sections. Each Member State shall be responsible for organising the reception and processing of applications, which shall be lodged at a diplomatic mission or consular post of a Member State.

In this context, the following points related to cooperation between Member States have been clarified:

- the terms of cooperation between Member States when the “one-stop” principle is applied for several diplomatic missions;
- recourse to honorary consuls;
- cooperation with external service providers (see above) and types of cooperation envisaged when tasks are delegated to those service providers; Member States’ obligations in the event of recourse to external service providers (notably their obligation to verify the reliability of the provider and their compliance with data protection rules);
- service fees (these should be proportionate to the costs incurred by the external service provider while performing one or more of the tasks).

The Regulation also contains provisions in terms of cooperation with **commercial intermediaries** (private administrative agencies and transport or travel agencies, such as tour operators and retailers).

Reporting: the Commission shall present, 3 years after the VIS is brought into operation and every 4 years thereafter, a report on the implementation of the Regulation, including the implementation of the collection and use of biometric identifiers, the suitability of the ICAO standard chosen, compliance with data protection rules, experience with external service providers with specific reference to the collection of biometric data, the implementation of the 59-month rule for the copying of fingerprints and the organisation of the reception and processing of applications.

The report shall also include the cases in which fingerprints could factually not be provided or were not required to be provided for legal reasons, compared with the number of cases in which fingerprints were taken. It must include information on cases in which a person who could factually not provide fingerprints was refused a visa. The report shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.

The first report shall also address the issue of the sufficient reliability for identification and verification purposes of **fingerprints of children under the age of 12** and, in particular, how fingerprints evolve with age, based on the results of a study carried out under the responsibility of the Commission.

Territorial provisions: Norway, Iceland, Switzerland and Liechtenstein shall be associated with the implementation of the Regulation pursuant to the bilateral agreements concluded with the EU on the Schengen acquis. The United Kingdom and Ireland shall not participate in the adoption of the text, pursuant to the protocol annexed to the EU Treaty and subsequent decisions. For the same reasons, Denmark shall not participate in the adoption of the text but may decide within a period of 6 months if it will transpose or not this text into its national law.

ENTRY INTO FORCE: 29 May 2009.