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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**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 procedure¹,

¹ Position of the European Parliament of 15 September 2016 (not yet published in the Official Journal) and decision of the Council of ...

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 Council¹, 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 1994², is not widely accepted by authorities of third countries, for reasons including its inadequate security standards.

¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

² Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals (OJ C 274, 19.9.1996, p. 18).

- (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.
- (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 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 333/2002¹ should therefore be applied to the European travel document for return.

¹ Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (OJ L 53, 23.02.2002, p. 4).

- (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-Making¹. 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 Council².

¹ OJ L 123, 12.5.2016, p. 1.

² 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 (OJ L 281, 23.11.1995, p. 31).

- (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 Council¹, 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/EC²; 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.

¹ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

² 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* (OJ L 131, 1.6.2000, p. 43).

- (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/EC¹; 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 latter's association with the implementation, application and development of the Schengen *acquis*², which fall within the area referred to in Article 1 of Council Decision 1999/437/EC³.

¹ 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* (OJ L 64, 7.3.2002, p. 20).

² OJ L 176, 10.7.1999, p. 36.

³ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application 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* (OJ L 176, 10.7.1999, p. 31).

- (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*¹, 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/EC².

¹ OJ L 53, 27.2.2008, p. 52.

² Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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* (OJ L 53, 27.2.2008, p. 1).

- (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*¹, 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/EU².
- (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.

¹ OJ L 160, 18.6.2011, p. 21.

² Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

- (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.

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 paragraph 1 of Article 3 of Directive 2008/115/EC;
- (2) 'return' means return as defined in paragraph 3 of Article 3 of Directive 2008/115/EC;
- (3) 'return decision' means return decision as defined in paragraph 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.

Article 5

Issuing fees

The European travel document for return shall be issued free of charge for the third-country national.

Article 6
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3(5) shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of this Regulation].
3. The delegation of power referred to in Article 3(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 7

Repeal

The Council Recommendation of 30 November 1994 is repealed.

Article 8

Review and reporting

By ... [insert date: 24 months after the date of entry into force of this Regulation], the Commission shall review and report on the effective implementation of this Regulation. The review of this Regulation shall be incorporated into the assessment as provided for in Article 19 of Directive 2008/115/EC.

Article 9
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... [four months after the date of its entry into force].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX



Name of the Member State

European travel document for the return of illegally staying third-country nationals

Issuing authority:

Document No:

Valid for one journey from:

to:

Name(s):

Surname(s):

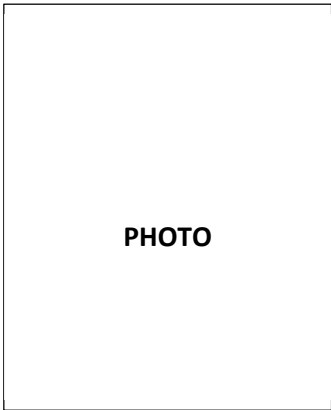
Date of birth:

Sex:

Nationality(-ies):

Distinguishing marks:

Address in the country of return (if known):



PHOTO

Issued at:

Date:



STAMP

Signature:
