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NOTE

From: Presidency
To: Permanent Representatives Committee

Subject: Regulation of the European Parliament and of the Council on the False and Authentic Documents Online (FADO) system and repealing Joint Action 98/700/JHA
- Confirmation of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 12 September 2018, the Commission put forward a proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard¹ (hereafter 'EBCG' Regulation).
2. The proposal provided for an enhancement of the European Border and Coast Guard Agency mandate, operational capacity and powers, including the integration of the False and Authentic Documents Online (FADO) system² into the European Border and Coast Guard framework.

¹ 12143/18 + ADD 1

² FADO is a European image system designed for exchanging information among Member States on authentic and false documents. It is currently managed by the General Secretariat of the Council according to Joint Action 98/700/JHA.

3. On 18 December 2018, the Working Party on Frontiers discussed the FADO-related provisions included in the EBCG Regulation. It was considered appropriate to opt for a separate draft Regulation on FADO based on Article 87(2)(a) TFEU (as part of *Schengen acquis* concerning police cooperation) in order to keep participation in the system open to all EU Member States, including Ireland, as well as to the Schengen associated countries. It was understood that the split would not in any way affect the take-over of the FADO system by the Agency.
4. On 20 February 2019, the Committee of Permanent Representatives endorsed a mandate for negotiations with the European Parliament on the new FADO Regulation³. On 25 February 2019, a letter communicating the split was sent to the rapporteur and to the Chairman of the LIBE Committee.
5. In the European Parliament, the file was assigned to the Civil Liberties, Justice and Home Affairs (LIBE) Committee with Roberta METSOLA (EPP, MT) as rapporteur.
6. On 21 March 2019, the Conference of Presidents of the European Parliament endorsed the split of the Commission proposal and authorised the LIBE Committee to draw up a separate legislative report for the provisions pertaining to the FADO system.
7. On 13 November 2019, the EBCG Regulation was adopted⁴. In Article 79, the Regulation confirms that the Agency shall take over the administration and the operational and technical management of the FADO system as soon as the European Parliament and the Council have adopted the relevant legal act on the FADO system replacing Joint Action 98/700/JHA.

³ 11479/19

⁴ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1)

II. STATE OF PLAY

8. Work resumed after the European Parliament elections with Roberta METSOLA (EPP, MT) again being appointed as rapporteur. Following the preparatory work by the Committee, the European Parliament announced its decision to open negotiations at the plenary session of 14 November 2019⁵.
9. The three institutions engaged in preparatory work immediately following the adoption of the European Parliament's negotiating mandate. Three technical trilogues took place, preceded and followed by several informal meetings. The JHA Counsellors (Frontiers) were debriefed on the progress made and oriented the Presidency during the negotiating process.
10. A trilogue organised on 28 November 2019 in Strasbourg concluded with a provisional political agreement. The main elements included in the provisional agreement are as follows:
 - **Processing of personal data.** Specific provisions were drafted to ensure that the processing of personal data by Frontex will be limited to what is strictly necessary, in line with the principle of data minimisation. Falsified documents will only contain personal data to the extent that they are necessary to describe or illustrate the features or method of falsification. It will not be possible to identify any individual through FADO without additional data.
 - **Access to the system.** The system's architecture will enable access to information with different levels of detail. Member States authorities such as border guard, police and other law enforcement authorities will have access on a need-to-know basis. The Commission and Frontex will have access to the extent necessary for the performance of their tasks. Other EU institutions and bodies, third parties or private entities could also get access in a limited manner. Finally, the general public will have access to specimen and authentic documents.

⁵ http://www.europarl.europa.eu/doceo/document/A-9-2019-0022_EN.html

- **Implementing and delegated acts.** A balanced compromise was found during the negotiations with the European Parliament. Only one delegated act was retained to establish measures granting restricted access to other EU institutions and bodies, third parties or private entities. On the other hand, implementing acts will be adopted by the Commission to establish the technical architecture of FADO, other technical specifications and procedures and the determination of the date of effective implementation of the system by Frontex.

III. CONCLUSION

11. In light of the above, the Permanent Representatives Committee is invited to:

- examine and approve the final compromise text set out in the annex to this note with a view to reaching an agreement at first reading with the European Parliament;
- mandate its Chair to send a letter to the Chair of the Civil Liberties, Justice and Home Affairs (LIBE) Committee stating that, should the European Parliament adopt its position at first reading in the form set out in the compromise contained in the annex to the letter (subject to revision by the lawyer-linguists of both institutions), the Council would approve the European Parliament's position and the Regulation shall be adopted with the wording that corresponds to the European Parliament's position.

PE-CONS No/YY - 2018/0330B(COD)

REGULATION (UE) .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**on the *False and Authentic Documents Online (FADO)* system and repealing the Joint Action
98/700/JHA**

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 87
(2)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure,

⁶ OJ C , , p. .

⁷ OJ C , , p. .

Whereas:

- (1) The European image archiving system on False and Authentic Documents Online (FADO) was established by Joint Action 98/700/JHA⁸ within the General Secretariat of the Council. It was set up to facilitate exchange of information between EU Member States' authorities on the authentic documents and on known forgery methods. FADO provides for the electronic storage, rapid exchange and validation of information on authentic and false documents. Given that the detection of false documents is also important for citizens, organisations and businesses, the General Secretariat of the Council has also made authentic documents available in a Public Register of Authentic Travel and Identity Documents Online (PRADO).
- (2) Since the management of FADO is outdated and should be adapted to the institutional framework set by the TFEU, the Joint action 98/700/JHA should be repealed and replaced by a new, updated instrument.
- (3) This Regulation constitutes the necessary new legislative basis for governing FADO.
- (4) While false documents and identity fraud are often detected at the external borders, the fight against false documents is an area covered by police cooperation. False documents can be either forged, counterfeit or pseudo documents. The use of false documents in the Schengen area has significantly increased in the last years. Document and identity fraud entails the production and use of false documents, as well as the use of authentic documents obtained by fraudulent means. False documents are a multi-purpose criminal tool as they can be used repeatedly to support different criminal activities, including money laundering and terrorism. The techniques used to produce false documents are increasingly sophisticated and necessitate high-quality information on possible detection points, notably security features and fraud characteristics, as well as frequent updating.

⁸ Council Joint Action 98/700/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the setting up of a European Image Archiving System (FADO) (OJ L 333, 9.12. 1998, p. 4).

- (5) Document fraud can ultimately undermine internal security of the Schengen area as an area without internal border controls. The use of FADO as an electronic storage system describing possible detection points, both in authentic and in false documents, is an important tool to fight against document fraud, in particular at the Schengen external borders. Given that FADO is contributing to maintaining a high level of security within the Schengen area by supporting fight against document fraud by police, border guards, customs and other law enforcement authorities of the Member States, FADO constitutes an important tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.
- (6) Processing of personal data in FADO should be limited to what is strictly necessary for the purpose of operating FADO. As a direct consequence of the purpose for which FADO was created, only limited information related to an identified or identifiable person should be stored in FADO. FADO should contain personal data in the form of a facial image or alphanumerical information data only insofar as they are related to the security features or the method of falsification. Such limited personal data can be stored either in the form of different elements appearing in the specimen of authentic documents or in the form of pseudonymised data in authentic or falsified documents. The European Border and Coast Guard Agency (Frontex) (the ‘Agency’) should take the necessary steps to pseudonymise all elements of personal data which are not necessary in relation to the purposes for which the data are processed in accordance with the principle of data minimisation. It should not be possible to search any elements of personal data in FADO nor should it be possible to identify any natural person through FADO without additional data. FADO should not be used to identify a person.
- (7) Any processing of personal data by Member States in the context of this Regulation should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council or Directive (EU) 2016/680 of the European Parliament and of the Council, as applicable.

- (8) FADO should contain information on all types of authentic travel, identity, residence and civil status documents, driving licenses and vehicle licenses issued by Member States and the EU laissez-passer issued by the European Union and of the falsified versions of such documents in their possession. FADO may contain information on other related official documents issued by Member States especially such as those used in support of applications for official documents issued by Member States. FADO may also contain information on all types of authentic travel, identity, residence and civil status documents, driving licenses and vehicle licenses and on other related official documents, especially such as those used in support of applications for official documents issued by third parties, such as third countries, territorial entities, international organisations and other entities subject to international law and of the falsified versions of such documents.
- (9) While Member States can maintain or develop their own national systems containing information on authentic and false documents, they should be obliged to provide the Agency with information on authentic documents which they issue and their security features and falsified versions of such documents in their possession. The Agency should upload that information to FADO and guarantee the uniformity and quality of the information.
- (10) The European Union issues EU laissez-passer to members of EU institutions to be used for service purposes in accordance with Council Regulation (EU) No 1417/2013⁹. The European Union should be obliged to provide the Agency with information on such authentic documents and their security features.

⁹ Council Regulation (EU) No 1417/2013 of 17 December 2013 laying down the form of the laissez-passer issued by the European Union (OJ L 353, 28.12.2013, p. 26).

- (11) In order to ensure that Member States have a high level of control over document fraud, the Member States authorities competent in the area of document fraud such as border guard, police and other law enforcement authorities and other relevant national authorities should be provided with access to FADO with different levels of access depending on their requirements, on a need to know basis. Member States should determine the competent authorities and the level of access to FADO. The Commission and the Agency should also determine the services and units competent to access FADO. Equally, FADO should enable users to have at their disposal information on any new forgery methods that are detected and on new authentic documents that are in circulation, in accordance with their access rights.
- (12) FADO should provide different stakeholders, including the general public, with different levels of access to documents depending on their need to access the system and the sensitivity of the data to be accessed.
- (13) Over the past years, the Agency has developed expertise in the area of document fraud. Synergies should be enhanced through the Agency's expertise to benefit the Member States in this area. The Agency should take over and operate FADO as provided for in Regulation (EU) 2019/1896. This take over should not have an effect on those actors which already have access to the FADO system. These actors are the Commission, the Agency, Europol, the Member States and the general public. After the transfer of FADO, the Agency should provide the Member States with support in the detection of falsified documents. Additionally, and where appropriate, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice may provide technical support to the Agency in accordance with Article 68 of Regulation 2019/1896.
- (14) It should be ensured that, during the transitional period, FADO remains fully operational until the transfer has been effectively carried out and the existing information has been transferred to the new system. The ownership of the existing data should then be transferred to the Agency.

- (15) This Regulation should not affect the competence of Member States relating to the recognition of passports, travel documents, visas or other identity documents.
- (16) In order to allow access to information in FADO to other institutions, bodies, offices, agencies, third parties or private entities, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of establishing measures granting access in a limited manner to FADO to Union institutions, bodies, offices and agencies, third parties, such as third countries, territorial entities or international organisations, and private entities, such as airlines and other carriers. 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-Making. 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.
- (17) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred to the Commission with regards to the technical architecture of FADO, the establishment of the technical specifications the procedures for controlling and verifying information as well as the determination of the date of the effective implementation of FADO by the Agency. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council.

- (18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, 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 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.
- (19) The United Kingdom is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and Article 8(2) of Council Decision 2000/365/EC¹⁰.
- (20) Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and Article 6(2) of Council Decision 2002/192/EC¹¹.
- (21) As regards Iceland and Norway, this Regulation constitutes 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 acquis¹², which fall within the area referred to in Article 1, point H, of Council Decision 1999/437/EC¹³.

¹⁰ 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).

¹¹ 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).

¹² OJ L 176, 10.7.1999, p. 36.

¹³ 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).

- (22) As regards Switzerland, this Regulation constitutes 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 acquis¹⁴, which fall within the area referred to in Article 1, point H, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/849/EC and Article 4(1) of Council Decision 2004/860/EC.
- (23) As regards Liechtenstein, this Regulation constitutes 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, which fall within the area referred to in Article 1, point H, of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU¹⁵ and Article 3 of Council Decision 2011/350/EU¹⁶.

¹⁴ OJ L 53, 27.2.2008, p. 52.

¹⁵ Council Decision 2011/349/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 in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

¹⁶ 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).

- (24) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council on 7 November 2018¹⁷ and delivered an opinion on 30 November 2018.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and purpose of FADO

This Regulation establishes the False and Authentic Documents Online system ('FADO') containing information on authentic documents issued by Member States, the European Union, third countries, territorial entities, international organisations and other entities subject of international law and on falsifications thereof.

The purpose of FADO system is to contribute to the fight against document and identity fraud by sharing information on security features and potential fraud characteristics in authentic and false documents between the competent national authorities and on authentic documents with the general public.

Article 2

Scope

1. FADO shall contain information regarding travel, identity, residence and civil status documents, driving licenses and vehicle licenses issued by Member States or the European Union and the information regarding the falsifications thereof.

¹⁷ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

FADO may also contain information regarding the documents listed in the first subparagraph issued by third countries, territorial entities, international organizations and other entities subject of international law, as well as information regarding the falsifications thereof.

FADO may also contain information regarding other related official documents, especially documents such as those used in support of applications for official documents issued by Member States, and, where applicable, by third countries, territorial entities, international organisations and other entities subject to international law.

2. The information referred to in paragraph 1 shall be the following:
 - (a) information, including images on specimen or authentic documents and their security features;
 - (b) information, including images on false, either forged, counterfeit or pseudo documents and their fraud characteristics;
 - (c) summary information on forgery techniques;
 - (d) summary information on security features of the genuine authentic documents;
 - (e) statistics on detected false documents.

FADO may also contain handbooks, contact lists and information on valid travel documents and their recognition by Member States, recommendations on effective ways of detecting specific methods of forgery as well as other useful related information.

3. Member States and the European Union shall transmit without delay to the European Border and Coast Guard Agency (the ‘Agency’) the information concerning the documents referred to in the first subparagraph of paragraph 1.

Member States may also transmit to the Agency the information concerning the documents as referred to in subparagraphs 2 and 3 of paragraph 1.

Third parties may also transmit to the Agency the information concerning the documents as referred to in paragraph 1.

Article 3

Responsibilities of the Agency

1. In the performance of its task in accordance with Article 79 of Regulation 2019/1896 (EBCG Regulation), the Agency shall ensure the proper and reliable functioning of FADO and provide support to the Member States' competent authorities in the detection of falsified documents.
2. The Agency shall be responsible for uploading in a timely and efficient manner the information obtained and shall guarantee the uniformity and quality of that information.

Article 4

FADO's architecture and access thereto

FADO's architecture shall enable access to information with different level of detail.

1. The Commission and the Agency to the extent necessary for the performance of their tasks and the Member States authorities competent in the area of document fraud such as border guard, police and other law enforcement authorities and other relevant national authorities shall have secure access to FADO on a need to know basis.
2. FADO architecture shall enable public access to specimen of authentic documents or authentic documents with pseudonymised data.

3. The following may obtain access to information in FADO in a limited manner:
 - (a) other Union institutions, bodies, offices and agencies;
 - (b) third parties, such as third countries, territorial entities or international organisations;
 - (c) private entities, such as airlines and other carriers;
4. The Commission shall adopt delegated acts in accordance with Article 8 supplementing this Regulation in order to establish measures granting access to information stored in FADO to the actors listed in paragraph 3 of this article. The delegated acts shall set out for the actors listed in paragraph 3 the part of FADO to which access is to be granted and any specific procedures and conditions that may be necessary, including the requirement to conclude an agreement between the Agency and a third party or a private entity as referred to in points (b) and (c) of paragraph 3.
5. Member States shall determine which authorities competent in the field of document fraud and other relevant national authorities shall have access to FADO including the level of access and notify the Commission and the Agency thereof.

Upon request, the Commission shall transmit such information to the European Parliament.

Article 5

Processing of personal data by the Agency

The Agency shall apply Regulation (EU) 2018/1725 when processing personal data under this Regulation. The Agency shall only process personal data where such processing is necessary for the performance of its task to operate FADO.

As regards authentic documents, FADO shall only contain personal data included in the specimen of such documents or pseudonymised data.

As regards falsified documents, FADO shall only contain personal data to the extent they are necessary to describe or illustrate the features or method of falsification.

The Agency shall ensure that technical and organisational measures such as pseudonymisation are in place in order to ensure that the processing of personal data is limited to what is strictly necessary for the purpose of FADO in line with the principle of data minimisation in a way which does not permit the identification of any individual through FADO without additional data.

Article 6

Implementing measures

The Commission shall adopt implementing acts in accordance with Article 7(2) in order to establish:

- (a) the technical architecture of FADO
- (b) the technical specifications for entering and storing information into the system according to high standards;
- (c) the procedures for controlling and verifying the information contained in the system;
- (d) the determination of the date of the effective implementation of FADO by the Agency.

Article 7

Committee procedure

1. The Commission shall be assisted by the "Article 6 Committee" established by Regulation (EC) 1683/95.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 8

Exercise of delegation

1. The power to adopt delegated acts is conferred on to the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 4(4) 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 4(4) 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 4(4) 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 to 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 of the Council.

Article 9

Repeal and transitional provisions

1. Joint Action 98/700/JHA is repealed with effect from the date of the effective implementation of the system by the European Border and Coast Guard Agency, to be decided by an implementing act adopted in accordance with the procedures referred to in Article 7.
2. The Commission shall adopt a decision setting the date on which FADO operations start pursuant to this Regulation, after verification that the following conditions have been met:
 - (a) the implementing acts necessary for the application of this Regulation have been adopted;
 - (b) The Agency has notified the Commission of the successful implementation of FADO architecture;
 - (c) The Agency has notified the Commission that the transmission of information from the General Secretariat of the Council to the Agency has been completed.
3. The General Secretariat of the Council shall transfer the information currently present in FADO as set up by Joint Action 98/700/JHA to the Agency
4. Member States shall agree to the transmission by the General Secretariat of the Council of the information currently present in FADO in their ownership into the system.

Article 10

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.

For the European Parliament

For the Council

The President

The President
