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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Regulation of the European Parliament and of the Council on the false and authentic documents online ('FADO') system and repealing the Joint Action 98/700/JHA - Mandate for negotiations with the European Parliament

At its meeting on 20 February 2019, the Permanent Representatives Committee agreed on the mandate for negotiations with the European Parliament, as set out in the Annex.

Changes to the Commission proposal are marked in underline for additions and in ~~strikethrough~~ for deletions.

ANNEX

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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 Committee,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The European image archiving system on False and Authentic Documents Online (FADO) was established by Joint Action 98/700/JHA within the General Secretariat of the Council of the European Union. FADO has been set up to facilitate exchange of information between EU Member States' authorities on the genuine documents and on known forgery methods. It provides for the electronic storage, rapid exchange and the validation of information on genuine and false documents. Given that detection of false documents is also important for citizens, organisations and businesses, the General Secretariat of the Council has made authentic documents available also in a Public Register of Authentic Identity and Travel Documents Online (PRADO).

(2) In its conclusions of 27 March 2017, the Council, reiterating the key role FADO has to play in detecting document and related identity fraud, stated that the management of the FADO system is outdated and that a change of the legal basis is required in order for the system to continue to meet the requirements of Justice and Home Affairs policies. The Joint action should be therefore 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. The fraudulent use of documents in the Schengen area has significantly increased in the last years. Document and identity fraud entails the production and use of counterfeit documents, the falsification of genuine documents, as well as the use of genuine documents obtained by fraudulent means, ~~of~~ like deception or misrepresentation. 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.

(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) FADO should contain information on all types of, genuine and false, travel, identity and residence documents, civil status, driving licenses, vehicle licenses and other related official documents ~~including breeder documents~~ issued by Member States, third countries, territorial entities, international organizations and other entities subject to international law. ~~FADO should not contain personal data. Any personal data contained in the specimen of documents such as facial images or any other data allowing to identify a person should be anonymised before their inclusion in the system.~~

(7) Whereas Member States can maintain or develop their national ~~electronic document storage~~ systems containing information on genuine and false documents, they should be under the obligation to feed the information on genuine and false documents they possess, into the FADO system. In particular, Member States should enter into FADO security features of new versions of genuine documents issued by Member States ~~in advance before putting the documents in circulation~~.

(8) In order to ensure a high level of control of document fraud by Member States, FADO should provide access to ~~national~~ authorities in the Member States competent for document fraud such as border police, other law enforcement authorities or other third parties as established by means of implementing acts. Equally, the system should enable users to have at their disposal information on any new forgery methods that are detected and on new genuine documents that are in circulation.

(9) The FADO system should keep its multi-level architecture to provide different levels of access to documents to different stakeholders, including the general public.

(10) Over the past years, the European Border and Coast Guard Agency ~~(Frontex)~~ has developed expertise in the area of document fraud. The European Border and Coast Guard Agency ('Agency'), established by Regulation XXX of the European Parliament and Council on the European Border and Coast Guard, is therefore to take over, as provided for in that Regulation, the administration as well as the operation and technical management of the FADO system from the General Secretariat of Council of the European Union.

(11) It should be ensured that during the transitional period the FADO system is fully operational until the transfer is effectively carried out and the existing information is ~~are~~ transferred to the new system. The ownership of the existing data should then be transferred to the European Border and Coast Guard Agency.

(12) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred to the Commission with regard to the establishment of the technical specifications of the FADO system, ~~as well as~~ procedures for the exchange of information within the FADO system as well as measures providing restricted access to third parties. Those powers should be exercised in accordance with Regulation No 182/2011 of the European Parliament and the Council.

(13) This Regulation should not affect the competence of Member States relating to the recognition of passports, travel documents, visas, or other identity documents.

(14) 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 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.

[(15) The United Kingdom is taking part in this Regulation in accordance with Article 5 of the Protocol 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/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 .]

(16) Ireland is taking part in this Regulation in accordance with Article 5 of the Protocol 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/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis.

(17) 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 association of those two States 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 on certain arrangements for the application of that Agreement.

(18) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis, 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 Decisions 2004/849/EC and 2004/860/EC.

(19) As regards Liechtenstein, this Decision 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 Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU and Article 3 of Council Decision 2011/350/EU.

~~(20) As regards Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen acquis within the meaning of Article 4(2) of the 2005 Act of Accession.~~

~~(21) Concerning Cyprus and Croatia this Regulation constitutes an act building upon, or otherwise relating to, the Schengen acquis within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession and Article 4(2) of the 2011 Act of Accession.~~

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose of FADO

The purpose of the False and Authentic Documents Online ('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

Subject matter

This Regulation establishes the FADO system containing information on genuine travel, identity, ~~and~~ residence ~~documents~~, civil status, driving licenses, vehicle licenses and other related official documents issued by Member States, third countries, territorial entities, international organis~~z~~ations and other entities subject of international law and on falsifications thereof.

Article 3

Categories of documents

1. FADO shall include the following:

(a) information, including images, on genuine 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 documents;

(~~f~~e) statistics on detected ~~forgeries~~ false documents.

FADO may also contain handbooks, contact lists and information on valid travel documents and their recognition by Member States, as well as other useful related information.

~~2.~~ ~~The FADO system shall not contain any personal data. Any personal data contained in the specimen of documents such as facial images should be anonymised before their inclusion in the system.~~

2~~3~~. Member States shall transmit the data on genuine and false documents in their ownership ~~they possess~~ into the system.

3. ~~They~~ Member States shall transmit into the system without delay the information on ~~the~~ security features of any new genuine documents issued. ~~before putting such documents in circulation.~~

Article 4

FADO architecture

The FADO architecture shall enable restricted access to the system for ~~control~~ competent authorities of the Member States such as border police, other law enforcement authorities, or other third parties in accordance with Article 6, ~~or FADO experts~~ as well as public access ~~to the Public Register of Authentic Documents Online (PRADO)~~.

Article 5

Processing of personal data by the Agency

The Agency shall apply Regulation (EU) 2018/1725 when processing personal data.

Article 6~~5~~

Implementing measures

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

(a) the technical specifications for entering and storing information into the system according to high standards;

(b) the procedures for controlling and verifying the information contained in the system;

(c) measures granting restricted access to third parties such as airlines, EU institutions and agencies, third countries or international organisations.

Article 7~~6~~

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~~7~~

Repeal and transitional provisions

1. Joint Action 1998/700/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~~6~~.

2. Member States shall agree to the transmission by the General Secretariat of the Council of the current FADO data on genuine and false documents in their ownership into the system. ~~Member States shall agree to transmit the data currently in FADO to the new FADO system.~~

Article ~~8~~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.

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~~Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard~~

~~Article 80~~

~~The Agency shall take over and operate the False and Authentic Documents Online ('FADO') system established in accordance with Regulation of the European Parliament and of the Council on the false and authentic documents online ('FADO') system and repealing the Joint Action 98/700/JHA.~~