

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement’

(COM(2018) 212 final — 2018/0104 (COD))

(2018/C 367/15)

Rapporteur-general: **Jorge PEGADO LIZ**

Referral	European Parliament, 28.5.2018 Council, 18.6.2018
Legal basis	Articles 21(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Bureau decision	22.5.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	155/8/5

1. Conclusions and recommendations

1.1. The EESC warmly welcomes the initiative under consideration, which it deems to be necessary and urgent, agrees with its legal basis, which is appropriate for the limited scope of the proposal and approves of the choice of legal instrument. It confirms that the proposal complies with the principles of subsidiarity and proportionality as well as being in line with the fundamental rights, and calls for its urgent adoption.

1.2. The Committee also agrees with the mandatory inclusion of a facial image of the holder of the card and two fingerprints in interoperable formats and also with the need for the separability of biometric data from any other data stored on these cards.

1.3. The EESC believes however, that the Commission has not fully justified its legislative choice, nor has it explained the reasons that prevented it from putting forward a proposal based on greater legislative harmonisation, creating a genuine single system of identification documents, which would have undeniable security advantages in terms of the simplicity and speed of checks and the uniformity of the procedures, offering irrefutable benefits to citizens. The Committee does not understand why the mandatory elements included in the Appendix to the Impact Assessment have not been included, as happened with the residency permits for European citizens, namely the title of the document, name, sex, nationality, date of birth, place of birth and place of issue, signature and expiry date of the document.

1.4. The Committee also considers the proposal to fall short of the REFIT conclusions and citizens' consultations, which revealed situations that clearly hinder freedom of movement in the European area, insofar as the introduction of identity cards on their national territory remains optional for the Member States, as does the definition of the scope, minimum information and the type of identity cards.

1.5. The EESC would have liked the Commission to consider the possibility of introducing a European identity card that would give European citizens the right to vote through such a card, even if it were necessary to use another legal basis.

1.6. The EESC is concerned that the compliance costs involved in the new cards may fall on citizens by an indeterminate, unsuitable and disproportionate amount, since the decision is left entirely to Member State administrations.

1.7. The EESC also believes that any additional elements that the Member States include on these cards could have also been dealt with and where appropriate, standardised, with regard to both their inclusion and their use by the parties concerned or by third-parties.

1.8. The EESC considers it essential that the implementation of this proposal be monitored and supervised by the European Commission, thus ensuring full recognition of the documents that are the subject of the proposal under consideration not only as identity documents but as a tool that will enable the holder to carry out a range of activities in any Member State, including movement within the Schengen area, purchasing goods and services and, in particular, financial services and access to public and private services.

1.9. Given the need for and urgency of this regulation, the EESC recommends shortening all the deadlines for its entry into force and future monitoring.

1.10. It calls on the Commission, the European Parliament and the Member States to consider its proposals, with particular reference to the aspects which it considers essential, as well as the arrangements for use of the same cards by third-parties, which have proved essential in some Member States.

2. Brief summary of the content and grounds for the proposal

2.1. In its Communication to the European Parliament, the European Council and the Council — *Fourteenth progress report towards an effective and genuine Security Union* ⁽¹⁾ — and in other discussions on the evolution of the two main pillars of European defence: the fight against terrorism and organised crime and the resources to support it and the strengthening of our defences and resilience to threats, the Commission has mentioned, *inter alia* ⁽²⁾, a legislative proposal aimed at increasing the security of national identity cards and residency permits that would ‘*make it more difficult for terrorists and other criminals to misuse or falsify such documents to enter or move within the EU*’.

2.2. This Communication mentions specifically that, as demonstrated by the European Border and Coast Guard Agency’s statistics on fraudulent documents, ‘*national identity cards with weak security features are the most often fraudulently used travel documents within the EU*’. As part of the European response to travel document fraud set out in the December 2016 Action Plan, the Commission adopted, together with the Progress Report, a proposal for a regulation to strengthen the security of identity cards issued to Union citizens and of residence documents issued to Union citizens and their family members. ‘*Enhancing the security features of identity cards and residence documents will make it more difficult for criminals to misuse or falsify such documents to move within the EU or cross the EU external borders. More secure identity documents will contribute to strengthening EU external border management (including the challenge of returning foreign terrorist fighters and their family members), while at the same time, more secure and reliable documents will make it easier for EU citizens to exercise their free movement rights*’ — according to the proposal.

2.3. The Commission proposal, based on an impact assessment and public consultation, sets out minimum document security standards for national identity cards, including in particular a biometric photo and fingerprints to be stored in a chip on the identity card. The proposal also envisages the minimum information to be provided on the residence documents issued to mobile EU citizens, as well as full harmonisation of the residence cards of non-EU family members. The Commission invites the co-legislators to examine the legislative proposal without delay in order to reach swift agreement.

2.4. The proposal for a Proposal for a Regulation must be considered within this broad framework. Its objectives include:

a) improving and enhancing border management at the external borders;

⁽¹⁾ COM(2018) 211 final of 17.4.2018.

⁽²⁾ Of particular note are the new instruments for: collecting electronic evidence in criminal proceedings; facilitating the use of financial information for the purposes of prevention, detection, investigation or prosecuting serious criminal offences; strengthening checks against the import and export of firearms to impede the trafficking of illegal firearms; tackling online terrorist content, the interoperability of information systems and improving information sharing; protecting against chemical, biological, radiological and nuclear risks in public places; tackling cybercrime and strengthening cybersecurity.

- b) fighting terrorism and organised crime and building a genuine security union;
- c) facilitating the mobility of EU citizens in exercising their right to free movement and proving their identity to public and private bodies when they exercise their right to reside in another EU country;
- d) strengthening the European response to fraud in travel documents and reducing the risk of forgery and document fraud;
- e) preventing abuse and threats to internal security arising from failings in document security;
- f) preventing travel to third countries to engage in terrorist activities and impunity upon return to the EU.

2.5. To achieve these objectives the Commission has put forward the Proposal for a Regulation *sub judice*, which it considers to be the appropriate legal instrument pursuant to Article 21(2) of TFEU, and which it considers to respect the principle of subsidiarity and to comply with the principle of proportionality.

2.6. Of the three options assessed namely, maintaining the status quo, wider harmonisation or introducing a system for defining minimum security standards for ID cards and common minimum requirements for residence permits issued to EU citizens and, in the case of residence permits for family members of non-EU citizens, the use of a standard common format for residence permits for third country nationals, the last option has been chosen as it is considered to respect fundamental rights, particularly data protection and privacy.

2.7. The proposal under consideration will also be accompanied by non-binding measures (such as awareness-raising and training) aimed at ensuring its harmonised implementation. These will be tailored to the specific situation and needs of each Member State and include:

- a) a programme to monitor the achievements, results and impact of the regulation;
- b) reports by the Member States to the Commission one year after the launch of the implementation, and each year thereafter, of information regarded as essential to ensure effective support for this regulation;
- c) Commission assessment of the effectiveness, efficiency, relevance, coherence and EU added value of the legal framework that has now been approved, but only six years after the date of application, to ensure that there are sufficient data and stakeholder consultations to collect views on the effects of legislative changes and the non-binding measures applied.

3. General comments

3.1. The EESC warmly welcomes the initiative under consideration, the need for which it has already demonstrated in previous opinions, agrees with its legal basis, which is suitable for the context of the proposal and approves of the choice of legal instrument. It confirms that the proposal complies with the principles of subsidiarity and proportionality as well as being in line with the fundamental rights, and also calls for its urgent adoption.

3.2. The Committee also agrees with the mandatory inclusion of a facial image of the holder of the card and two fingerprints in interoperable formats — and the exemptions provided — and also with the need for the separability of biometric data from any other data stored on these cards by decision of the Member States.

3.3. The EESC notes the conclusions of the REFIT process and citizens consultations, which highlighted situations that clearly impeded free movement in the European area, namely due to identity cards that are not recognised by the authorities as travel documents, different validity periods that hinder recognition by Member States and difficulties in access to goods and services experienced by citizens.

3.4. However, the Committee believes the proposal falls short of these conclusions insofar as the introduction of identity cards on their national territory remains optional, as does the definition of the scope, minimum information and the type of identity cards.

3.5. The EESC highlights that identity cards are usually issued as the holder's main proof of identity, allowing citizens to access financial services — including opening accounts — social benefits, healthcare, education and exercising legal and political rights.

3.6. Moreover, in line with the European Parliament's study *The Legal and Political Context for setting a European Identity Document*, the EESC would also have liked the Commission to consider the possibility of introducing a European identity card that would give European citizens the right to vote exclusively through such a card, even if it were necessary to use another legal basis.

3.7. The EESC is also concerned that the compliance costs involved in the new cards may fall on citizens by an indeterminate amount, since the decision is left entirely to Member State public administrations. In this regard, the EESC considers it necessary to assess the costs of this proposal in advance, so as to ensure that they are suitable and proportionate.

3.8. The EESC wishes to stress that, according to the Impact Assessment of this proposal, many of the Member States that issue identity cards do not yet permit the production of biometric data (Italy, France, Romania, Croatia, Czech Republic, Finland, Malta, Slovakia and Slovenia); it is therefore important to quantify and assess the financial and technological impact this will have for citizens and their public administrations.

3.9. The EESC further emphasises the need for this proposal to provide clarity as regards the legitimacy of identity cards as a tool that enables the holder to carry out a range of activities in any Member State, including movement within the Schengen area and purchasing goods and services, in particular financial services.

3.10. Moreover, the Committee also cannot fail to highlight the problems that have been experienced with regard to residence documents, in particular, the number of documents and the refusal of entry in the Member States, as well as access to essential goods and services, as it fears that this proposal may not be enough to resolve these situations.

3.11. However, it stresses the need to ensure compliance with the principle of minimising data processing, thus guaranteeing that the purposes of biometric data collection are clear and transparent and have lawful, well-defined and transparent aims.

3.12. The EESC believes however, that the Commission has not fully justified its legislative choice, nor has it explained the reasons that prevented it from putting forward a proposal based on greater legislative harmonisation, creating a genuine single system of identification documents, which would have undeniable security advantages in terms of the simplicity and speed of checks and the uniformity of the procedures, offering irrefutable benefits to citizens. The Committee does not understand why this harmonisation was not put forward at least as a medium-term objective. This option, which was explicitly referred to in the Commission Staff Working Document (SWD(2018) 111 final ⁽³⁾) was preferred by 'A majority of EU citizens consulted [who] support the wider EU harmonisation of national ID cards (ID 2), and are in favour of overall harmonised residence documents (RES 3)'.
(RES 3)

3.13. Indeed, it is not clear why the proposal did not include the mandatory aspects provided for in the Appendix to the Impact Assessment of the proposal under discussion — as was done for residence permits for EU citizens —, namely: document title, name, sex, nationality, date of birth, place of birth and place of issue, signature and expiry date of the document.

3.14. The EESC stresses the need to strengthen the fraud monitoring policy, with particular focus on transport: air, land and maritime transport. Border control services should be provided with human, logistical and technical resources in order to ensure not only the recognition of documents from all Member States, but also to enhance their inspection.

3.15. The EESC considers it essential that the implementation of this proposal be monitored and supervised by the European Commission, thus ensuring full recognition of the documents that are the subject of the proposal under discussion, both as travel documents and as providing access to public and private services.

3.16. The EESC also believes that any additional elements that the Member States include on these cards could, if necessary, have also been dealt with and where appropriate, standardised, with regard to both their inclusion and their use by the parties concerned or by third-parties.

⁽³⁾ Summary of the Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement.

4. Specific comments

4.1. Article 1 — With regard to the scope of the proposal under discussion, the EESC believes that it should refer to minimum information requirements.

The EESC emphasises the need to establish clearly that the regulation respects the principle of legality, as well as the principles of authenticity, veracity, lack of ambiguity and security of citizens' data identifiers.

4.2. Article 2 — In addition to the scope and without prejudice to Directive 2004/38/EC, the EESC draws attention to the need for the proposal to define 'identity cards issued by Member States to their nationals', so as to ensure that processing of documents is harmonised in all Member States.

4.3. Article 3(2) — The EESC questions the need to include 'one other official language', which it deems neither suitable nor appropriate for facilitating cross-border recognition of documents.

4.4. Article 3(10) — The EESC believes that the validity periods of these documents should be set uniformly in the regulation, in accordance with uniform age classifications.

4.5. Article 5 — The period for phasing out cards should be 3 instead of 5 years.

4.6. Article 6

4.6.1. Residence permits should include the following elements:

— parents' names

— nationality

— place of birth

— sex

— height

— eye colour

— signature.

4.6.2. As regards the name and surname of the holder, the name to be inscribed should be complete, consistent with the birth certificate and respect official spelling, in order to guarantee that citizens' individual identities can be distinguished.

4.7. Article 8(2) — The period for phasing out cards should be 3 instead of 5 years.

4.8. Article 10 — Without prejudice to the application of Regulation (EU) 2016/679, the EESC is of the view that this proposal should include specific rules on the purpose of the database, the methods for collection and updating, communication, consultation and access to data and the retention of personal data.

4.9. Article 12(1) — The deadline for submission of the implementation report should be 3 instead of 4 years, as set out in recital 21.

4.10. Article 12(2) — The deadline for the evaluation report should be 5 and not 6 years.

4.11. The EESC recommends that the regulation set a deadline for requesting identity cards after birth (e.g. 30 days).

4.12. The regulation should also stipulate that identity verification of valid identity cards by any public or private entity should restrict retention or preservation when the card is presented to the minimum necessary to preserve the security and defence of Member States. It should also be forbidden to reproduce cards via photocopying or any other means, without the express consent of the holder, except by decision of a judicial authority, for clear reasons of security, prevention of fraud or improper use and for reasons of data protection and privacy.

4.13. Moreover, the regulation should explicitly provide for the immediate deletion of data in case of loss, theft or replacement of the card, in order to prevent the fraudulent use of official documents.

Brussels, 11 July 2018.

*The President
of the European Economic and Social Committee*
Luca JAHIER
