BRIEFING

Initial Appraisal of a European Commission Impact Assessment

European Parliament

Security of ID cards and of residence documents issued to EU citizens and their families

Impact assessment (SWD(2018) 110, SWD(2018) 111 (summary)) accompanying a Commission 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

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's impact assessment (IA) accompanying the above-mentioned proposal, submitted on 17 April 2018 and referred to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE).

Currently, there are at least 86 different versions of identity cards (ID cards) and 181 types of residence documents in circulation in the EU. The Free Movement Directive (2004/38/EC) stipulates the conditions that EU citizens and their third-country-national family members need to meet in order to exercise their right of free movement and residence within the Union.[1] However, it does not regulate the format and minimum standards for the ID cards and residence documents to be used for entering or leaving an EU Member State (IA, pp. 9-10).[2] This proposal aims to strengthen the security features of ID cards and residence documents of EU citizens and their non-EU family members. Passports and travel document issued by Member States are already regulated by EU law.[3]

Problem definition

Overall, the IA provides sound evidence in support of the analysis leading to the problem definition. The IA identifies the following three problems:[4]

1. Insufficient acceptance of ID cards and residence documents in another Member State

Member States do not apply a common format, minimum standard information or minimum production standards for ID cards. Public and private actors are nonetheless legally obliged to treat all these ID cards, which are of variable quality, as being of equal evidential value. The inconsistent design and information provided in ID cards makes it often challenging to identify them as such and to verify that they have been validly issued. In practice, however, ID cards issued in one Member State are often not accepted in another, deterring citizens to exercise their right to move freely (IA, p. 10). Moreover, not all residence documents include the most relevant data, and not every Member State issues all the various types of residence documents (IA, Annex 5). According to the IA, there is also confusion regarding the legal status and the distinctive role of residence documents. These problems discourage citizens from exercising their rights to move freely in the EU or make it difficult to prove their residence in another Member State (IA, pp. 9-11; see also Annex 6).

2. Document fraud and lack of authentication of ID cards and residence documents

Some ID and residence documents of third-country-national family members (TCN FAM) of mobile EU citizens do not meet the international document security standards (IA, Annex 5). This prevents a fast and reliable authentication, and makes fraud based on the 'weakest link' easier. For ID card holders, this affects negatively the interoperability and efficiency of border checks across the EU.[5] Where TCN FAM residence cards are falsified through the exploitation of weak document standards,

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their bearers could be wrongly exempted from the visa obligation at the EU's external borders. Once a person has entered the Schengen area using a fraudulent document, they can travel easily to other Schengen Member States. In its 2017 annual risk analysis, FRONTEX emphasised that Member States' ID cards with fewer security features face a higher risk of document fraud. Today, an estimated 0.8 million individuals in the EU are affected by identity theft (0.2 % of the EU's population) with an average individual loss of around €250 or €2 billion at EU level (IA, pp. 11-14).

3. Complexity of issuance and administration of ID cards and residence documents

EU citizens also face problems with regard to the issuance and administrative handling of ID cards and residence documents. The IA points out that currently not all Member States offer their citizens the opportunity to request ID cards outside their country. As a consequence, citizens need to travel back to their home country to request an ID card, as a result of which they incur higher costs. Whereas the timeframes for obtaining registration certificates vary between Member States, EU citizens can face delays and excessive formalities when applying in other countries (IA, pp. 14-15).

Objectives of the initiative

The **general objectives** of the proposal are twofold:

1) to improve security within the EU and at its borders;
2) to facilitate and promote EU citizens' and their family members' right to move and reside freely within the EU.

The **specific objectives** of the proposal are:

- to reduce document fraud;
- to improve acceptance and authentication of ID and residence documents;
- to improve the identification of people based on ID documents;
- to raise awareness about these documents and the linked right of free movement;
- to simplify EU citizens' daily life, cut red tape and lower costs for citizens, but also for private and public entities (IA, pp. 20-21).

These objectives tie in with the identified problems and their drivers. However, the objectives could have been formulated more specifically, in line with the SMART criteria.[6]

Range of options considered

The IA proposes ten policy options divided into three blocks. These blocks contain options relating to 1) ID cards, 2) residence documents, and 3) the process regarding issuance (IA, p. 24; Annex 7). The IA suggests one non-legislative option in each block. The range of options appears reasonable.

According to the Commission, the baseline option for all three blocks rests on the understanding that intra-EU mobility has grown in recent years, and the trend is likely to continue (IA, pp. 15-18). In addition, the Commission claims that pressure at the EU's external borders would increase, and more persons would try to enter the EU irregularly, seeking to exercise free movement by means of document fraud.[7] ID cards and residence documents would continue to be regulated differently across EU Member States. Voluntary alignment is not happening or is happening at a slow pace. Some aspects of the problems identified are expected to improve slightly (IA, pp. 22-23).

The preferred option for each block is shaded in grey in the table below (see also Annex 8). The Commission explains that the preferred options would set a minimum standard for document format and security, making border control more effective and secure. Free movement would also be facilitated by diminishing 'hassle costs'[8] for EU citizens when crossing borders and accessing services. In addition, non-legislative measures would allow for support (IA, pp. 56-61; Annex 10). No derogation from the EU data protection regime is envisaged and Member States would implement clear rules in line with the EU data protection *acquis* (explanatory memorandum of the legislative proposal, p. 8).

Options regarding the format and security of ID cards (IA, pp. 25-28)	
ID SOFT	Non-legislative measures related to ID cards, e.g. awareness-raising, capacity-building and training, and enhanced administrative cooperation
ID. 1: SOFT + Minimum common requirements for ID format and security	ID SOFT; minimum harmonisation of ID card features, e.g. name, renewal, validity, and minimum security features, in line with International Civil Aviation Organization (ICAO) document 9303. Optional elements can be added if required by national provisions e.g. address, national emblem; phasing out of all documents that do not meet the requirements by a fixed deadline
ID. 2: SOFT + ID. 1 + Common format for ID cards	ID SOFT; harmonisation of all key features of national ID cards beyond ICAO requirements, including an EU emblem, colour and fingerprints; phasing out all documents that do not meet the requirements by a fixed deadline
ID. 3: SOFT + EU ID cards	ID SOFT; option for Member States to adopt an EU identity card in addition to the national ID cards. The EU ID card would have all of the completely harmonised features described in option ID. 2. National ID cards would not have to be phased out
Options regarding format and security of residence documents[9] (IA, pp. 29-30)	
RES SOFT	Non-legislative measures related to residence documents, similar to ID SOFT, including awareness-raising, training, enhanced administrative cooperation and Your Europe
RES. 1: SOFT + Harmonisation of a limited amount of residence document data	RES SOFT; harmonisation of some mandatory features, such as the document title, document number, name and date of issue. Optional features can be added; no phasing out
RES. 2: SOFT + RES 1 + Common format for TCN FAM residence document	RES SOFT; RES. 1; harmonisation of TCN FAM residence documents (as they act as visa waivers), which would comply with ICAO document 9303 and use the common uniform format for residence permits,[10] including biometrics; phasing out
RES. 3: SOFT + RES 1 + Common format for all residence documents	RES SOFT; RES. 1; a harmonised common format for all types of residence documents as referred to by Directive 2004/38/EC (see uniform format RES. 2); phasing out for old non-compliant TCN FAM residence documents
Options on the process involved in issuing ID cards and residence documents, and on the way Member States share information about the related processes (IA, pp. 30-31)	
Process SOFT	Promotion of more and better options for requesting and receiving documents, and for improving information-sharing between Member States about related processes, for instance through online application tools
Process SOFT + Issue ID cards through consular networks of all Member States	Process SOFT; Member State consular networks are required to issue ID cards to their mobile citizens on a mandatory basis

Scope of the impact assessment

The IA analyses the wider economic and social impacts, and the impact on fundamental rights. The level of security is also assessed (IA, pp. 31-33).

Options for ID cards – the IA states that all options would have a positive impact on the free movement of persons, including labour mobility, as enshrined in Article 45 of the EU Charter of Fundamental Rights (EU Charter). The effect of ID. 3 would be lower because the problems related to national ID cards remain (IA, p. 33). The Commission makes it clear that the impacts of the various options on employment levels and social inclusion generally mirror the impacts on the free movement of persons. All options would reduce hassle costs for citizens, albeit to a limited extent under ID. 3. Cost savings would increase with the progressive harmonisation of ID cards (from ID. 1 to ID. 2). 'The exact amount, however, cannot be quantified' (IA, p. 36). There would be no compliance costs for citizens under options ID SOFT and ID. 3. The legislative measures envisaged by ID. 1 and ID. 2 could create some replacement costs for citizens in those cases where the country charges for a renewal of the card. There would be no compliance costs for businesses under any option. There would be cost savings for banks or airlines if procedures were as quick for non-national EU citizens as for nationals: €3.9 million could be saved annually when opening a bank account and €12.4 million when making pre-boarding checks. It can be assumed that ID cards under ID. 1 are sufficiently harmonised to achieve the same impact as in the case of full harmonisation under ID. 2. Card manufacturers would benefit under all options, albeit to differing degrees (IA, pp. 36-38).

Public authorities would have to bear certain costs relating to guidance, dissemination, awareness-raising and training under ID SOFT; such activities could cost around €11 million per year. The IA considers the costs of enhancing regulatory and advisory bodies marginal. It finds that all legislative options require from public administrations to invest administrative and financial resources. The total cost for phasing out would amount to €778.3 million. Option ID. 3 does not envisage any phasing out and is thus cost-neutral. Other factors, such as time savings at the border control (€17.1 million per year) or good administration (IA, pp. 38-40), could contribute to cost savings.

All options would have a positive impact on fundamental rights, such as the rights of persons with disabilities[11] (for instance, by making use of Braille for the visually impaired (albeit to a very limited extent for ID SOFT)), political rights,[12] the right to petition,[13] and the right to liberty and security.[14] Conversely, the right to respect for one's private and family life and the right to the protection of personal data[15] would be impacted negatively. Data processing would be involved under all options. ID. 1 would require biographical data and an obligatory facial image, which would need to be encrypted. ID. 2 and ID. 3 would extend this requirement to fingerprints and also envisage the collection of certain biometric data. By enhancing administrative cooperation, all options would reduce document fraud, identity theft and crime, albeit to differing degrees (IA, pp. 33-35).

Options on residence documents – the IA points out that all options would have a positive impact on the free movement of persons, including indirectly on labour mobility. The more harmonised residence documents across Member States are (from options RES. 1 to 3), the higher the positive impact would be. All options would reduce the hassle costs for citizens: the higher the level of harmonisation, the less hassle costs. The phasing-out regime for TCN FAM cards under RES. 2 and 3 would require that the affected TCN FAM card holders in up to 21 countries replace their documents before their expiry date. As concerns cost savings, the more harmonised the documents are, the more benefits there would be for businesses requiring a residence document together with an ID card when carrying out services. As for the cost savings for private services, RES. 2 and RES. 3 would offer particular benefits through the harmonisation of the security features of TCN FAM cards, to be easily accepted in all EU Member States when persons are checked before boarding. While RES SOFT and RES. 1 would not change the production system of documents, RES. 2 and 3 would nevertheless create a small opportunity for card manufacturers (IA, p. 44).

For public authorities, the costs of offering guidance would be similar to those for ID cards. Likewise, the IA regards the costs of strengthening the regulatory and advisory bodies as marginal. The IA

finds that RES. 1 would not place a substantial burden on public administrations. However, it would still ensure that residence documents contain a minimum of information of EU-wide relevance for administrative purposes. At least 19 Member States would need to correct or translate the title of the documents. Under RES. 2, at least 21 Member States would need to upgrade their production of TCN FAM cards, and under RES. 3 all 28 Member States would need to adapt their existing production of residence documents. Regarding the phasing out of old non-compliant documents, at least 14 Member States not yet using the uniform format would need to bear some additional costs due to the five-year transition period. The only cards to be phased out prematurely would be some of the TCN FAM permanent residence documents, whereas TCN FAM residence cards would be replaced within a five-year cycle. The additional cost for Member States under RES. 2 and 3 would amount to €3.1 million (IA, pp. 45-46; Annex 4, p. 85).

In terms of fundamental rights, RES SOFT would have a positive effect on the rights of persons with disabilities. The legislative options would not achieve an additional effect. All options would contribute equally to preventing the current forgery of documents, thereby reinforcing individuals' right to liberty and security. RES. 2 and 3 would clearly have an impact on private and family life by reducing unjustified denial of TCN FAM holders' entry at EU borders. The obligation to collect personal data affects the protection provided by Articles 7 and 8 of the EU Charter. RES SOFT and RES. 1 would not change data processing significantly. Further impact is anticipated under RES. 2 and 3, since they include an obligation to collect biometrics. All options would reduce document fraud and contribute to reducing crime (IA, pp. 41-42).

Options on process – PROCESS SOFT and PROCESS. 1 would foster the free movement of persons. Likewise, both options would reduce citizens' hassle costs; under PROCESS. 1, the benefits for expatriates could be quite substantial. For public authorities, the costs of guidance would be part of the overall soft-law package as discussed under the ID SOFT and RES SOFT. Public authorities could save administrative costs under PROCESS SOFT. As there is little evidence available on the administrative costs of issuing residence documents, it is not possible to calculate the precise gains, but an extrapolation of the Danish case points to substantial cost savings. Under PROCESS. 1, these cost savings would be partially offset by the costs of issuing ID cards via the consular networks. There would be no compliance costs under PROCESS SOFT, while PROCESS. 1 would involve only costs for those seven Member States that currently do not issue ID cards via their consular networks. 'The costs cannot be calculated due to a lack of data' (IA, p. 48). With regard to fundamental rights, both options would have a positive effect on the rights of persons with disabilities. Data processing would happen under both options; therefore, Articles 7 and 8 of the EU Charter would be affected and adequate safeguards would be required. Access, erasure and rectification rights as an effective remedy would be ensured in line with the data protection *acquis* and Article 47 of the EU Charter. Both options would have a very limited positive impact on the reduction of document fraud.

Lastly, the Commission compares the options in section 7 of the IA with regard to their effectiveness, efficiency, coherence and compliance with the proportionality principle (IA, pp. 49-56), in line with the Commission's better regulation guidelines.

Subsidiarity / proportionality

The legal basis for the proposal is Article 21(2) TFEU, which provides for the adoption of measures to facilitate the exercise of free movement of EU citizens. This includes reducing the risk of fraud in the form of forgery of documents and ensuring the trust needed for such free movement (IA, p. 18 and explanatory memorandum of the legislative proposal, p. 4). Under the heading 'subsidiarity', the IA considers the necessity and added value of EU action. It points out that 'a common approach to enhancing the security features of documents and establishing the data that documents should provide as a minimum is still missing and results in continuing problems across Member States and an open door to document fraud' (IA, p. 18). Member States cannot improve the current situation by acting alone, since the underlying problem is that both the cross-border acceptance and the verification of ID and residence documents are hampered. There is a high likelihood that such

problems will persist (IA, pp. 18-19). The IA states that it is essential that all Member States comply with minimum standards as regards ID-card and residence-document security and features to maintain an adequate level of security within the EU and its borders, having the 'weakest link' in mind. A single country issuing weak documents is enough to undermine the EU's overall security. The issuance, handling and administration of ID and residence documents are a national matter. Nevertheless, good administrative practices regarding the issuance of documents should be communicated effectively across the EU and mastered properly at EU level. 'As a result, the objectives of any initiative to remedy this situation could not be achieved at a national level and there is a strong argument for EU action. Even if the documents originate from a national competence, they all have an intrinsic European dimension because of their interconnection with the exercise of free movement' (IA, p. 20). The IA also compares the different options with regard to the principle of proportionality. According to the Commission, the selected options respect the principles of proportionality and subsidiarity (IA, pp. 49-57). No reasoned opinions have been submitted by national parliaments at the time of writing. The deadline for submission is 19 July 2018.

Budgetary or public finance implications

According to the explanatory memorandum of the proposal, the proposal has no implications for the EU budget (p. 8). The financial impacts will vary from one Member State to another, depending on the changes needed and how quickly improvements are implemented (compliance costs for phasing in and phasing out). Costs will be minimised as the replacements are expected to mostly be synchronised with the natural replacement cycle. 'All national administrations will eventually benefit from time savings in administration and public services' (IA summary, pp. 2-3).

SME test / Competitiveness

The Commission states that while all options would have wider economic and social impacts, it is difficult to assess whether SMEs would be affected by the facilitated freedom of movement to the same extent as larger companies (IA, p. 32). The IA summary indicates that 'the preferred option will allow businesses, including SMEs and micro-enterprises, to have more trust in the identification documents presented by potential clients from other Member States and therefore broaden their business opportunities. This is of particular interest to smaller enterprises that do not have the financial and personal means to develop processes, expertise and staff training to handle identification documents correctly. The improvement in consistency with regard to the various types of documents will also offer some opportunities for card producers' (p. 2).

Simplification and other regulatory implications

The initiative is included in the 2018 Commission work programme under the REFIT initiatives in the area of justice and fundamental rights based on mutual trust (explanatory memorandum of the legislative proposal, p. 7). The initiative responds to an opinion of the REFIT Platform.[16] Improvement of cross-border access to services is mainly tackled by other initiatives, such as the eIDAS Regulation and the Single Digital Gateway (IA, p. 6). The IA provides a list of the REFIT cost savings the preferred options would yield, and gives quantifications, where possible, with figures taken from the external study prepared by the Centre for Strategy & Evaluation Services (CSES, see section below).

Quality of data, research and analysis

The IA is based on the findings of an external study, prepared by the CSES and published in August 2017.[17] Other sources used for the IA include: a stakeholder consultation (Annex 2), a consultation of Member States within the FREEMO expert group on the right of free movement of persons, and a June 2016 European Parliament study[18] by the consultancy Milieu. The Commission's Joint Research Centre also conducted a 'review of the concepts of the initiative' (IA, p. 66). However, the IA does not provide a link to this review. Furthermore, it appears that neither the EU Fundamental Rights Agency nor the European Data Protection Supervisor were consulted when drawing up the IA.

Annex 4 to the IA includes a multi-criteria analysis and a sensitivity analysis. It also includes further information on the calculation of the phasing-out costs for ID cards and TCN FAM residence documents and the annual costs for non-legislative measures across the EU. The IA says that both Member States' authorities and the private sector are reluctant to share data on the production and issuance of national documents, and data on the costs associated with the use of these documents. As a result, 'precise quantification of impacts of the different options is hardly possible' (IA p. 31).

Stakeholder consultation

The IA identifies the stakeholders that would be most strongly affected by the initiative as set out in the preferred option. These are the national administrations, as well as EU citizens and their family members (IA, Annex 3). The Commission carried out a wide range of stakeholder consultation activities. These included a 12-week online open public consultation, targeted interviews with specific groups of stakeholders (e.g. NGOs), two questionnaires sent to Member States, 53 interviews with Member States' authorities (except for the UK), and two meetings with the FREEMO expert group in 2017 (IA, Annex 2, pp. 67-70). The online open public consultation (12 September – 5 December 2017) used three questionnaires addressed to EU citizens, non-EU citizens and businesses. It received 398 replies from EU citizens from all Member States, 34 replies from non-EU citizens and 15 replies from businesses (IA, Annex 2, pp. 70-79). However, the IA report does not systematically indicate what specific option each stakeholder group prefers.

Monitoring and evaluation

The Commission plans to monitor the measures adopted at EU and Member State level. It also plans to publish an implementation report three years after the regulation becomes applicable. The Commission envisages collecting information, while national authorities would introduce monitoring systems (IA, pp. 62-63). Monitoring indicators are listed in Annex 9 to the IA. Although required by the better regulation guidelines, no operational objectives have been identified.[19]

Commission's Regulatory Scrutiny Board

The European Commission's Regulatory Scrutiny Board (RSB) delivered a positive opinion on 23 February 2018, evaluating the IA as clear and concise. The RSB recommended to: 1) present more information on what safeguards are applied to ensure data protection and what their impact will be, including costs; 2) explain in how far the choice of the preferred option changes if objectives are weighted differently in the multi-criteria analysis. It seems the RSB's comments were overall addressed in the IA; however, more detailed information on the safeguards regarding their impact on fundamental rights would have been desirable (Annex 1, IA, pp. 64-66).

Coherence between the Commission's legislative proposal and the IA

Overall, it appears that the Commission's legislative proposal corresponds to the preferred option in the IA. However, the Commission admits that it shortened the phasing-out period of ID and residence documents, fearing that further delays in implementing these modifications would create long-term security gaps (explanatory memorandum of the legislative proposal, p. 7).

Conclusions

The IA clearly explains the problems currently encountered with regard to ID cards and residence documents of EU citizens and their families, and proposes adequate solutions. The Commission used different sources to substantiate the IA, including an extensive external study. In addition, the Commission undertook several stakeholder consultation activities. However, the IA report does not systematically indicate which stakeholder group prefers what specific option. At times, the IA displays a lack of quantification, which the Commission openly admits. More detailed information on the safeguards against the impact on fundamental rights would have been desirable. In particular, it appears that neither the EU Fundamental Rights Agency nor the European Data Protection Supervisor were consulted when drawing up the IA.

ENDNOTES

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

[2] See also the European Commission's inception impact assessment of 6 September 2017.

[3] Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States. UK and IE are not part of this measure.

[4] See Annex 6 of the IA for further details on the consequences of the problems identified.

[5] The European Commission defines interoperability as 'the ability of information systems to exchange data and to enable the sharing of information', see European Commission communication, COM(2016) 205, 6 April 2016, p. 14.

[6] See Tool #16 of the Better Regulation Toolbox on 'How to set objectives', pp. 100-101.

[7] See IA, p. 22; the Commission refers to the CSES study.

[8] 'Hassle costs' are a non-monetary effort and inconvenience a citizen incurs in ordering, maintaining, using or disposing of an ID card or residence document, IA, p. 31, footnote 132.

[9] A potential legislative instrument can lay down requirements for only one, some or all of the different residence documents (see IA, Annex 5, Table 2.3). With the exception of TCN FAM residence documents, which are used as a visa waiver, there is no evidence suggesting the need to distinguish between the different residence documents (IA, p. 29).

[10] On the uniform format, see Council Regulation (EC) No 1030/2002, as amended by Regulation (EU) No 2017/1954.

[11] Article 26 of the EU Charter.

[12] Articles 39-40 of the EU Charter.

[13] Article 44 of the EU Charter.

[14] Article 6 of the EU Charter.

[15] Articles 7 and 8 of the EU Charter.

[16] REFIT Platform Opinion on the submission by a citizen (LtL 242) on Identity and Travel Documents, 7 June 2017.

[17] Centre for Strategy & Evaluation Services (CSES), Study to Support the Preparation of an Impact Assessment on EU Policy Initiatives on Residence and Identity Documents to Facilitate the Exercise of the Right of Free Movement, 28 August 2017.

[18] Milieu, The Legal and Political Context for Setting Up a European Identity Document, study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, 2 June 2016.

[19] See Tool #16 of the Better Regulation Toolbox, *op.cit*.

This briefing, prepared for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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