



EUROPEAN COMMISSION

*Brussels, 18.10.2018  
C(2018) 6747 final*

*Mr Michael MÜLLER  
President of the  
Bundesrat  
Leipziger Straße 3 - 4  
D – 10117 BERLIN*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinion 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}.*

*In accordance with European Union law on free movement of persons<sup>1</sup>, identity cards can be used by Union citizens as travel documents, both when travelling within the European Union and when entering the Union from non-European Union countries. Moreover, Member States have agreements with a number of third countries that allow Union citizens to travel to those countries using their national identity cards. This could also include situations of Union citizens travelling to third countries to engage in terrorist activities and then to return to the European Union.*

*Currently, security levels of national identity cards issued by Member States and of residence documents for European Union nationals residing in another Member State and their family members vary significantly. This increases the risk of falsification and document fraud or it could lead to practical difficulties for citizens when they seek to exercise their right of free movement.*

*Enhanced document security is an important factor in improving the security within the Union and at its borders and in supporting the move towards an effective and genuine Security Union. The inclusion of biometric identifiers, and particularly the inclusion of*

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<sup>1</sup> 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 (OJ L 158, 30.4.2004, p. 77).

*fingerprints, renders documents more reliable and secure. In that context, it is of crucial importance to phase out documents with weak security features as quickly as possible.*

*The Commission 2018 Work Programme<sup>2</sup> included the presentation of a legislative proposal (REFIT) to improve the security of identity cards and residence documents issued to European Union citizens and their family members who are not nationals of a Member State. The proposal is part of a broader package of measures designed to deny terrorist and criminals the means and space to act<sup>3</sup>.*

*The aim of the proposal is to enhance European security by closing security gaps resulting from vulnerable documents and to facilitate the exercise of European Union free movement rights by mobile Union citizens and their family members by increasing the reliability and acceptance of their documents in cross-border situations.*

*To achieve this goal, among other aspects, the proposal provides for rules on minimum document security standards for identity cards issued by Member States to their citizens. This will increase the protection of public authorities as well as of Union citizens and their family members from crime, falsification and document fraud. The proposal does not affect Member States' competence to decide whether to issue identity cards to their citizens and whether to make the possession of an identity card voluntary or compulsory. In addition, Member States will continue to independently design and produce their own identity cards according to their national specifications (colour, emblem, additional data, etc.), provided they meet the minimum security standards.*

*The Commission notes the Bundesrat's concerns that the proposal, in its current form, does not comply with the principle of proportionality<sup>4</sup>. In the Bundesrat's view, this concerns in particular the rules on the phasing-out of valid identity cards in circulation that do not comply with the minimum document security standards of the proposal<sup>5</sup>. The Bundesrat notes that if Member States are not obliged to introduce identity cards, they cannot be obliged to phase out non-compliant identity cards either. Identity cards that already comply with international standards are, in the eyes of the Bundesrat, sufficiently secure, which is why it would be disproportionate to retroactively change their validity in the absence of compelling reasons. Finally, both from a budgetary as well as an administrative perspective, the Bundesrat considers that it is unreasonable to have all non-compliant identity cards expire on the same day.*

*The Commission has carefully examined the concerns raised by the Bundesrat. The Commission considers that the phasing-out of identity cards should take into account the security risk as well as the costs and workload incurred by Member States. The Commission considers that a period of five years strikes the right balance between the frequency with which such documents are usually replaced and the need to fill the existing security gap within the European Union.*

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<sup>2</sup> [https://ec.europa.eu/info/publications/2018-commission-work-programme-key-documents\\_en](https://ec.europa.eu/info/publications/2018-commission-work-programme-key-documents_en)

<sup>3</sup> [http://europa.eu/rapid/press-release\\_IP-18-3301\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3301_en.htm)

<sup>4</sup> Article 5(4) of the Treaty on European Union.

<sup>5</sup> Article 5 of the proposal.

*The proposal does recognise the differences among the security standards of identity cards currently in use. Hence, the proposal foresees a significantly shorter period for the phasing-out of identity cards lacking certain key features, such as machine-readability, while allowing more time to replace identity cards that already partially comply with the minimum standards proposed. In this context, the Commission also considers that the security risk is different for those Member States that have decided not to issue identity cards at all (and thus rely more on other documents such as passports, which contain security features similar to those proposed for identity cards, including fingerprints) and those that issue identity cards in an insecure format.*

*New security challenges concerning the reliability of facial images (for example techniques known as morphing) also highlight the importance of the inclusion of fingerprints. Generally, fingerprints have shown to be the most reliable way of establishing the identity of a person and are a proportionate measure in light of the security threats facing the Union.*

*The Commission considers that any further delays in implementing the proposed minimum document security standards, for example by replacing identity cards in circulation only according to their normal life-cycle, could create long-term security gaps and would diminish the effectiveness of and coherence with other recently adopted security measures within the European Union and at its external borders. Therefore, the Commission considers the provisions on the phasing-out to be justified. Moreover, the Commission would expect Member States to provide their citizens with the necessary information and to put in place the necessary administrative procedures to avoid that citizens wait until the very last moment to exchange their phased-out identity cards.*

*The points made above are based on the proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council. A number of meetings of the Council working party responsible for the proposal have already taken place under the Bulgarian and Austrian Presidencies. A key part of the discussions so far has been dedicated to the appropriate time frame for the replacement of identity cards in circulation, which shows the importance given by Member States to this issue.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Věra Jourová  
Member of the Commission*