

BRIEF CONSIDERATIONS ON THE EXTENT IN WHICH THE IMPLEMENTATION OF THE UNION IDENTITY ELECTRONIC CARD GUARANTEES RESPECT FOR FUNDAMENTAL RIGHTS

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ABSTRACT: *Considering the increased mobility within the EU, on the one hand, but also the intensification of the fight against terrorism by strengthening external borders, on the other hand, the European Commission has launched the "2016 Action Plan" with the sole purpose of combating identity fraud. In order to facilitate freedom of movement within the Union, Member States, acting in accordance with their own legislation, must issue and renew identity cards or passports to Union nationals attesting their nationality.*

In support of the above-mentioned plan, the Union co-legislator adopted Regulation (EU) 2019/1157¹, according to which the renewal of identity cards or residence permits results from the need to harmonize the security levels that these documents confer on Union citizens or on their family members, considering the risk of forgery or fraud, criminal activities that endanger the freedom of movement. The provisions of this legislative instrument fully respect the fundamental rights of Union citizens as enshrined in the Charter of Fundamental Rights of the European Union². Moreover, the application of the union norm respects the right of citizens regarding the confidentiality of personal data.

At the level of 2021, the electronic identity card is considered to be "a key to authenticate the citizen in digital platforms that mediate the relationship of the Union national with the institutions of the state of origin or the host state, online".

KEYWORDS: *union citizen, family member, free movement, identity card, residence permit, biometric data, storage.*

INTRODUCTION

Article 21 TFEU facilitates the right of every citizen of the European Union to move and reside freely within the territory of the Member States.

In the same sense, Article 45 (paragraph 1) of the Charter of Fundamental Rights of the European Union provides that "every citizen of the Union has the right to move and reside freely within the territory of the Member States..."

¹ Regulation (EU) 2019/1157 of the European Parliament and of the Council of 20 June 2019 on enhancing the security of Union citizens' identity cards and residence documents issued to Union citizens and to their family members exercising their right to free movement.

² Ioana Nely Militaru, *Protection of Fundamental Rights in the European Union*, International Conference, "Perspectives of Business law in the Third Millennium" 8 November 2019, ninth edition, Bucharest, Section III. European Union Law. International Law, Volume 8, Issue 2, 2019

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Currently, the framework rule on the right to free movement³ and residence in the territory of the Member States for citizens of the Union and of their family members is Directive 2004/38 / EC⁴.

According to Article 3, the provisions of this Directive "shall apply to any citizen of the Union who travels to or resides in a Member State other than that of which he is a national and that of members of his family."

The stay on the territory of the EU is carried out in three ways, in relation to which, the framework norm identifies necessary documents and adequate conditions to be fulfilled, as the case may be, by the union national or his family members with or without union citizenship:

- a) stay up to three months;*
- b) stay after three months;*
- c) permanent residence.*

Regardless of the type of stay identified above, freedom of movement implies the right to enter and leave recognized to nationals and their family members on the territory of EU member states, with a valid identity card or passport. A valid passport is required for family members who do not have union citizenship.

Member States are also required to issue "non-national family member residence permit" to non-national family members. This document confers the right of residence⁵ under Article 10 paragraph (1) of the Union framework rule.

Following the acquisition of a permanent residence pursuant to Articles 19 and 20 of Directive 2004/38 / EC, nationals and their family members shall acquire on a permanent basis premises for permanent residence.

I. REGULATORY SCOPE OF THE REGULATION (EU) 2019/1157

In order to standardize and secure the documents attesting the identity of the union citizens either in the country of origin, referring to the identity card, or in the host union state, situation in which we retain the residence permit issued to both the national and his family members, Regulation (EU) 2019/1157 was drafted.

This union normative act applies:

- identity cards issued by Member States to their own nationals⁶;
- residence permits issued in accordance with Article 8 of Directive 2004/38 / EC to Union citizens residing for more than three months in an EU host Member State;
- residence permits issued in accordance with Article 19 of Directive 2004/38 / EC to citizens of the Union certifying their permanent residence in the EU host Member State;
- residence permits issued to family members without Union citizenship, in accordance with Article 10 of Directive 2004/38 / EC (we refer to family members accompanying the national with a recognized stay of more than three months);

³ Ioana Nely Militaru, European Union Law, Chronology. Springs. Principles. Institutions. The internal market of the European Union. Fundamental freedoms, 3rd Edition, revised and added, Universul Juridic, Bucharest, 2017

⁴ In support of a genuine area of freedom of movement for Union nationals, three directives were adopted in 1990 with a view to facilitating this right for the various categories of unemployed, namely Council Directive 90/365 / EEC on the right of residence of employed or employed persons or self-employed and who have ceased their professional activity; Council Directive 90/366 / EEC on the right of residence of persons under study and Council Directive 90/364 / EEC on the right of residence (for nationals of Member States who do not enjoy this right under other provisions of Community law and for their family members)

⁵ In accordance with the provisions of Article 11 paragraph (1) of Directive 2004/38 / EC, the residence permit recognized for family members who do not have union citizenship, "is valid for five years from the date of issue or for the period provided for the citizen of the Union, if this period is less than five years "

⁶ According to art.2, this regulation does not apply to identification documents issued provisionally with a validity period of less than 6 months.

- residence permits issued to family members without Union citizenship in accordance with Article 20 of Directive 2004/38 / EC (referring to family members accompanying the national with a recognized stay of more than three months)

The Regulation does not require Member States to introduce such documents, unless their own national law regulates this and on the other hand, nor does it affect the competence of Member States to issue under national law other documents which do not fall within the scope of the union rule.

However, regardless of the specific approach of each Member State, the framework rule provides that the movement in Union space can only be done using an identity document with biometric data, thus ensuring the prevention against electronic fraud. Citizens of Member States that refuse such a document are not restricted in their free movement in Union space, as they will have the alternative of a biometric passport.

Biometric technology brings advantages in the process of identifying the person by allowing the use of various types of images by taking the anatomical and behavioral characteristics directly or with the help of technical and scientific means connected to the system⁷.

The validity of identity documents is important in the process of construction and maintenance of a space in which the safety of the person is felt on the one hand by the participants in criminal proceedings, and on the other hand by community members⁸.

a) National identity cards

Regardless of the issuing Member State, the electronic identity card includes:

- On the front, the country code of the state, consisting of two letters framed in a blue rectangle and surrounded by a circle of 12 blue stars;
- A storage medium⁹ comprising two biometric elements, respectively, a facial image of the holder and two fingerprints¹⁰. We specify that for the collection of biometric identification elements, Member States apply the technical specifications for the uniform model of residence permit for citizens of non-EU states.

Regarding the validity period of identity cards, we specify that it is between five and ten years, being stipulated three derogatory situations, respectively:

- In the case of minors, identity cards with a validity of less than five years can be issued;
- In the case of persons in "special and limited circumstances", identity cards with a validity of less than five years may be issued;
- In the case of persons aged 70 years or more, identity cards with a validity of more than ten years may be issued.

Regardless of the means by which identity is protected in the legislation of some states by criminalizing the facts that harm public confidence in the process of investigating crimes, it is important to know where the legislator placed the crimes that protect identity, to analyze

⁷ Elena-Ana Iancu (Nechita), *The role of identity in the process of forensic identification* (bilingual edition, ro-eng) in the volume *Security of the person and the construction of social capital*, Universul Juridic Publishing House, 2019, p.637

⁸ *Idem*, p. 638

⁹ The storage medium must have sufficient capacity to guarantee the integrity, authenticity and confidentiality of the data. See in this respect Commission Implementing Decision C (2018) 7767 of 30 November 2018 laying down the technical specifications for the uniform model of residence permit for third-country nationals and repealing Decision C (2002) 3069.

¹⁰ According to art.3 paragraph (7) of the regulation, "Children under 12 years of age may be exempted from the obligation to submit to fingerprinting. Children under 6 are exempt from the obligation to undergo fingerprinting"

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the constituent elements of crimes, the essential requirements formulated in relation to various elements, as well as the penalties provided by law¹¹

b) Residence documents for EU citizens

With regard to documents to be issued by a host Member State, the Union regulation shall regulate separately according to the quality of the applicant:

- Union national applicant
- Applicant family member without union citizenship.

Thus, we identify a first situation established by article 6, which regulates the minimum requirements inserted in the document issued to the *Union national applicant*:

- The title of the document in the language of the issuing state and in at least one other official language of the EU;
- The statement that the document is issued to a citizen of the Union as defined in Directive 2004/38 / EU;
- Document Number
- Last name and first name, date of birth of the holder;
- The quality of union citizen of the applicant with the identification of the type of stay (over three months - art. 8 of Directive 2004/38 / EU, permanent residence - art. 19 of Directive 2004/38 / EU)
- Issuing authority;
- The country code of the state, consisting of two letters framed in a blue rectangle and surrounded by a circle of 12 blue stars.

For the applicant family member without union citizenship, regardless of the period for which the residence permit is requested (over three months or permanent residence) he is issued a document with similar mentions in the case of the union national, to which is added the title "Residence permit "Or Permanent Residence Permit" which indicates that "these documents are issued to a family member of a citizen of the Union in accordance with Directive 2004/38 / EC. For this purpose, Member States shall use the standardized code "EU Family Member Art.10 DIR 2004/38 / EC or "EU Family Member Art.20 DIR 2004/38 / EC in the data field, as mentioned in the Annex to Regulation (EC) No 1030/2002 as amended by Regulation (EU) 2017/1954".

c) Responsible authorities, monitoring and reporting

Article 9 of the Regulation stipulates the obligation of each Member State to designate ***a central authority, called - contact point*** - which represents the extension of the Member State both in relation to the European Commission and to other Member States from the perspective of collaboration on relevant information and assistance services. of the European Union included in the single digital portal (gateway)¹².

With regard to the issue of the collection of biometric identification data, at the level of each Member State, this will be done eminently by the ***authorities responsible*** for issuing identity cards or residence permits following regulated procedures at the level of each Member State. The collection of this data is done with a well-defined purpose, namely to be integrated on the storage medium which provides a high degree of security.

¹¹ Iancu Elena-Ana, *Theoretical and Practical Aspects Regarding the Investigation of the Criminal Offense of False Testimony*, in Athens Journal of Law, 2020, Volume 6, Issue 4, October 2020, p.323 <https://www.athensjournals.gr/law/2020-6-4-1-Iancu.pdf> <https://doi.org/10.30958/ajl.6-4-1>

¹² Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 November 2018 on the establishment of a single digital portal (gateway) to provide access to information, procedures and assistance and troubleshooting services and to amend the Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1)

With regard to the use of such stored data, this shall be done in compliance with the Union and national law of each Member State, only by *authorized staff* of both the responsible national authorities and the Union agencies, in order to verify, as appropriate:

- Authenticity of the identity card or of the residence permit;
- The identity of the holder.

We note that States will ensure that these procedures respect the rights and principles of the Charter and the Convention for the Protection of Fundamental Rights and Freedoms.

In the implementation activity, the responsible authorities at the level of each member state have the obligation to periodically provide information regarding the data collection, based on the monitoring program established by the European Commission.

Two years and eleven years after the date of application of this measure (2 August 2021), the Commission, in turn, will present to the European Parliament and the Economic and Social Committee a report on the state of implementation, the impact of the application of these provisions, in particular on how fundamental rights and personal data have been protected.

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In application of the provisions of article 9 paragraph 1 of the Regulation, the Directorate for Population Records and Database Administration, *named D.E.P.A.B.D. as a contact point for Romania*, with the following attributions¹⁴:

- Ensures the cooperation with the relevant institutions of the European Union in order to use the single digital portal (gateway);
- Represents the body responsible for issuing identity cards;
- Meets the notification obligation of the European Commission and the member states;
- It constitutes and updates, at least once a year, the list of competent authorities that have access to the biometric data registered in the storage medium. The list is published on the website of the D.E.P.A.B.D.

II. IDENTITY DOCUMENTS ISSUED ON THE ROMANIAN TERRITORY, IN THE LIGHT OF THE GOVERNMENT EMERGENCY ORDINANCE NO. 97/2005 REGARDING THE EVIDENCE, DOMICILE, RESIDENCE AND IDENTITY DOCUMENTS OF THE ROMANIAN CITIZENS, MODIFIED AND COMPLETED

What is the identity card?

Article 12 paragraph (3) of this GO provides that “Identity card means the identity card, the simple identity card, the electronic identity card, the temporary identity card, the temporary identity card and the identity card, which are in validity. ”

¹³ See Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation)

¹⁴ See in this sense art.3 and art.4 of Decision no.295 of March 10, 2021 regarding the approval of the Methodological Norms for unitary application of the provisions of the Emergency Ordinance no.97 / 2005 regarding the evidence, domicile, residence and identity documents of Romanian citizens, as well as for establishing the form and content of identity documents, proof of residence and real estate card.

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What does an identity document prove?

The identity document proves the Romanian citizenship and, as the case may be, the domicile in Romania. We mention that regarding the residence, its proof is made with the document called “proof of residence” which will accompany the identity card, the simple identity card or the electronic identity card.

The electronic identity card, as well as the identity cards issued and valid until August 1, 2021 constitute travel documents in the space of the European Union.

What does an electronic identity card give in addition to another identification document?

In accordance with the provisions of article 13 paragraph (4) of the GO, the electronic identity card allows the holder to authenticate in the computer systems of public or private institutions using the electronic signature, in accordance with the law.

According to the above article, Romanian citizens are issued identity documents:

a) starting with the age of 14, until the date of ensuring the technical infrastructure necessary for the issuance of the electronic identity card;

b) starting with the age of 12, until the date of ensuring the technical infrastructure necessary for the issuance of the electronic identity card. “Optionally, an electronic identity card can be issued before the age of 12, at the request of one of the parents, the legal representative, the designated person from the public service or an accredited private body for social protection of the child, temporarily or once for all separated by the parents, where the minor is, or of the person to whom the child was placed”¹⁵.

What are the categories of people who can apply for an electronic identity card?

- Romanian citizens residing in Romania;
- Romanian citizens domiciled in Romania temporarily in another EU member state, who may request the issuance of the electronic identity card from the diplomatic missions or consular offices of Romania;
- Romanian citizens domiciled in another EU member state can request the issuance of the e-identity card with the mention of the state of domicile, any community public service of evidence of persons but also diplomatic missions or the Romanian consular office in the state where he establishes his domicile.

Both the electronic identity card and the simple identity card are issued:

a) With a validity of six years, for persons aged between 12 and 18 years;

b) With a validity of ten years, after reaching the age of 18;

c) With unlimited validity, after reaching the age of 70.

From the date of ensuring the technical infrastructure necessary for the issuance of the electronic identity card, the Romanian citizens have the possibility to request the issuance, as the case may be:

- an electronic identity card, which gives the possibility of freedom of movement in union space;
- of a simple identity card, a document valid only on the Romanian territory. Those who opt for a simple identity card can travel to the EU with a valid passport.

Regarding the content and structure of the electronic identity card, we are of the opinion that the provisions of Regulation (EU) 2019/1157 are reiterated in article 17 of Government Ordinance 97/2005 amended and supplemented, in the sense that “Electronic identity card contains data in printed and in format inscribed by special techniques, data in electronic format as well as customization and safety elements. The electronic format includes the data from the printed format and biometric data of the holder, consisting of the facial image and papillary impressions of two fingers.

¹⁵See in this sense art.12 of the Government Emergency Ordinance no.97 / 2005 on the evidence, domicile, residence and identity documents of Romanian citizens, amended and supplemented

Regarding the issue of biometric data, various opinions were issued, in the sense of supporting or not these elements on the e-identity card. We are of the opinion that their presence is opportune because it competes in verifying the authenticity of the document and the identity of its holder.

Moreover, the confidentiality of the data is ensured by the fact that the verification of the authenticity of the document and of the identity of its holder is done only by an authorized personnel. The latter cannot use the data at will because the biometric data stored in order to personalize the electronic identity cards in SNIEP is kept until the date of collection of the document by the holder, but not more than 90 days from the date of its completion. Within this term all the information stored in the databases is deleted through the automatic and irreversible procedure.

CONCLUSIONS

The implementation of the electronic identity card at EU level aims, on the one hand, to simplify and debureaucratize procedures at Member State level, thus ensuring the creation of an appropriate framework available to the EU national to facilitate access to "e-government" services and in relations with third parties involving "electronic services". The use of such an electronic document in the citizen-civil servant relationship is an integral part of the concept of "e-government", i.e. the reform of the administration, a successful process in countries such as Italy, Belgium, Germany, Croatia, Netherlands, Portugal, Spain, Czech Republic.

On the other hand, this process of legislative harmonization introduces minimum security standards and standards regarding the format of identity documents recognized to union nationals but also to their family members without union citizenship, an approach that provides a consolidated level of security against identity fraud. Thus, the inclusion of security elements such as biometric data has as its sole purpose the possibility given to the authorities to verify whether a document is authentic, and to establish with certainty the identity of a person.

Also, considering the technological evolution, referring mainly to the multitude of services offered to the citizens of the EU member states in the fields of e-government, e-administration, e-identity, e-health, it is expected that the electronic document will provide the holder access to all these services.

Last but not least, the presence of such a document will facilitate the simplification of the exercise of the right to free movement in EU space, given that taking as a benchmark labour mobility, many Romanian citizens residing in a host state have requested embassies or consulates novels analyzing opportunities for issuing identity documents to children under 14 years.

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Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 November 2018 on the establishment of a single digital gateway to provide access to information, procedures and assistance and troubleshooting services and to amend Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018);

Directive 2004/38 / EC of the 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;

Decision no. 295 of March 10, 2021 on the approval of the Methodological Norms for unitary application of the provisions of the Emergency Ordinance no. 97/2005 on the evidence, domicile, residence and identity documents of Romanian citizens, as well as for establishing

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the form and content of identity, proof of residence and real estate card. This Decision ensures the application of Regulation (EU) 2019/1157;

Government Emergency Ordinance no. 97/2005 regarding the evidence, domicile, residence and identity documents of Romanian citizens, amended and completed;

Elena-Ana Iancu (Nechita), *The role of identity in the process of forensic identification* (bilingual edition, ro-eng) in the volume *Security of the person and the construction of social capital*, Universul Juridic Publishing House, 2019;

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