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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	17 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 302 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA

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Delegations will find attached document COM(2018) 302 final.

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Encl.: COM(2018) 302 final



Brussels, 16.5.2018  
COM(2018) 302 final

2018/0152 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA**

{SWD(2018) 195 final} - {SWD(2018) 196 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Background of the proposal**

Since 2011, the Visa Information System (VIS)<sup>1</sup> has served as the technology solution facilitating the short-stay visa procedure and helping visa, border, asylum and migration authorities to rapidly and effectively check the necessary information on third-country nationals who need a visa to travel to the EU. The VIS connects Member States' consulates around the world and all their external border crossing points. The system performs biometric matching, primarily of fingerprints, for identification and verification purposes.

As stated in the Communication on adapting the common visa policy to new challenges<sup>2</sup>, the EU common visa policy<sup>3</sup> is an essential part of the Schengen acquis. Visa policy is, and should remain, a tool to facilitate tourism and business, while preventing security risks and the risk of irregular migration to the EU. While the fundamental principles of visa processing have not been reviewed since the entry into force of the Visa Code<sup>4</sup> in 2010 and the VIS in 2011, the environment in which visa policy operates has changed drastically. The migration and security challenges faced in recent years have shifted the political debate about the area without internal border control in general, and about visa policy in particular, and prompted the EU to reassess the balance between migration and security concerns, economic considerations and general external relations.

In the Communication on preserving and strengthening Schengen<sup>5</sup> the Commission already stated that in an area without controls at internal borders, cross-border threats affecting public policy or the internal security are a matter of common interest. The absence of internal border controls has been accompanied by measures on external borders, visa policy, the Schengen Information System, data protection, police cooperation, judicial cooperation in criminal matters and drugs policies.

At the same time, significant technological developments are providing new opportunities to make visa processing easier for both applicants and consulates. Since VIS is an important component of the framework underpinning visa policy, this proposal complements the recent proposal amending the Visa Code presented by the Commission on 14 March 2018<sup>6</sup>. The VIS is an integral part of the Commission's approach to managing data for borders, migration and security. It seeks to ensure that border guards, law enforcement officers, immigration officials and judicial authorities have the information they need to better protect the EU's external borders, manage migration and improve internal security for all citizens. In December 2017 the Commission proposed the rules on

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<sup>1</sup> As established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

<sup>2</sup> COM(2018) 251 final.

<sup>3</sup> The common visa policy is a set of harmonised rules governing different aspects: (i) the common 'visa lists' of countries whose nationals require a visa to travel to the EU and those who are exempt from that requirement; (ii) the Visa Code establishing the procedures and conditions for issuing short-stay visas; (iii) the uniform format for the visa sticker; and (iv) the Visa Information System (VIS), in which all visa applications and Member States' decisions are recorded, including applicants' personal data, photographs and fingerprints.

<sup>4</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L243 of 15.9.2009.

<sup>5</sup> COM(2017)570 final.

<sup>6</sup> COM(2018)252 final of 14 March 2018.

interoperability between EU information systems<sup>7</sup> to make them work together in a smarter and more efficient way.

In 2016 the Entry/Exit System (EES) Regulation<sup>8</sup> established that the EES and VIS systems can be fully interoperable in order to provide a full picture of the visa application history of third-country nationals by adding information on how they used their visas. The proposal on establishing a framework for interoperability between EU information systems on borders and visa amends the VIS Regulation to establish the VIS as part of the single platform, together with EES and the European Travel Information and Authorisation System (ETIAS), on which the interoperability will be built. The multiple-identity detector introduced by the interoperability proposal will make it easier to detect multiple identities and counter identity fraud. The detector will automatically notify the visa authority processing an application if the applicant is known under different identities so that the authority can take the appropriate course of action. Once the new information systems have become operational and interoperability between them has been ensured, the possibilities for visa processing officers to perform quick background checks on applicants will be greatly increased. The European search portal (ESP) will enable single searches to receive results from different systems. This will help increase the security of the area without internal border controls. The legislation on visa processing needs amending to achieve this objective. The amendments should, in particular, include the obligation on visa authorities to automatically consult the multiple-identity detector as well as other databases when conducting security and migratory assessments of third country nationals applying for a short-stay visa.

An information gap at EU level was identified concerning the documents that allow third-country nationals to stay for a period of time of more than 90/180 days in the Schengen area: long-stay visas, residence permits and residence cards (Final Report of the high-level expert group on information systems and interoperability - HLEG<sup>9</sup> - of May 2017<sup>10</sup>). The Council<sup>11</sup> invited the Commission to undertake a feasibility study on the establishment of a central EU repository containing information on long-stay visas, residence cards and residence permits. The study<sup>12</sup> was finalised in September 2017 and concluded that a repository as part of the VIS would provide the most feasible solution in terms of IT security, ease of implementation and cost-effectiveness. A follow-up study was carried out on the necessity and the proportionality of extending the VIS to include data on long stay visas and residence documents<sup>13</sup>.

In addition to the interoperability work launched since April 2016 to create stronger and smarter information systems for borders and security, an overall evaluation of the VIS was carried out in 2016<sup>14</sup>. The evaluation looked specifically into the system's fitness for purpose, efficiency, effectiveness and added value for the EU. It found that the VIS meets its objectives and functions and remains one of the most advanced systems of its kind, but that new challenges in visa, border and migration management meant it needed further development in a number of specific areas.

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<sup>7</sup> COM(2017)793 final.

<sup>8</sup> Regulation (EU) 2017/2226 establishing an Entry/Exit System (EES) of 9 December 2017, OJ L 327, p. 20.

<sup>9</sup> The High-level expert group was set up by the Commission in June 2017 as an advisory body to improve the EU's data management architecture for border control and security. Its final report was adopted on 11 May 2017.

<sup>10</sup> <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=32600&no=1>

<sup>11</sup> <http://data.consilium.europa.eu/doc/document/ST-10151-2017-INIT/en/pdf>

<sup>12</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/docs/pages/201709\\_ibm\\_feasibility\\_study\\_final\\_report\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/docs/pages/201709_ibm_feasibility_study_final_report_en.pdf)

<sup>13</sup> Supporting study "Legal analysis on the necessity and proportionality of extending the scope of the Visa Information System (VIS) to include data on long stay visas and residence documents" (2018).

<sup>14</sup> COM (2016) 655.

On 17 April 2018, the Commission presented a proposal<sup>15</sup> on strengthening the security of residence cards of third country nationals who are family members of EU citizens. In view of this proposal, including such residence cards in the VIS is not necessary.

- **Existing provisions in the area of the proposal**

The VIS was established by Decision 2004/512/EC and its purpose, functionalities and responsibilities are set out in Regulation (EC) No 767/2008 (the VIS Regulation). Regulation (EC) No 810/2009 of 13 July 2009 (the Visa Code) sets out the rules on the registration of biometric identifiers in the VIS. Council Decision 2008/633/JHA of 23 June 2008 lays down the conditions under which Member States' designated authorities and Europol may obtain access to consult the VIS for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences.

This proposal is without prejudice to Directive 2004/38/EC<sup>16</sup>. The proposal does not in any respect amend Directive 2004/38.

- **Objectives of the proposal**

The general objectives of this initiative correspond to the Treaty based objectives of improving security within the EU and at its borders, facilitating the right of legitimate travellers to cross the external border, and freely move and stay within the area without internal border controls, and facilitating the management of the Schengen external borders. These objectives are further elaborated in the European Agenda on Migration and in subsequent communications, including the Communication on preserving and strengthening Schengen<sup>17</sup>, the European Agenda on Security<sup>18</sup>, the Commission's progress reports towards an effective and genuine Security Union and the Communication on adapting the common visa policy to new challenges<sup>19</sup>.

The specific objectives of this proposal are to:

- (1) facilitate the **visa application procedure**;
- (2) facilitate and strengthen checks at external border crossing points and within the territory of the Member States;
- (3) enhance the internal security of the Schengen area by facilitating the exchange of information among Member States on third country nationals holders of long stay visas and residence permits.

A number of ancillary objectives are also pursued:

- (4) facilitate identity checks of third-country nationals, on the territory of a Member State, by migration and law enforcement authorities;
- (5) make it easier to **identify missing persons**;

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<sup>15</sup> COM(2018) 212 final.

<sup>16</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).

<sup>17</sup> COM(2017)570 final.

<sup>18</sup> COM(2015)185 final.

<sup>19</sup> COM(2018) 251 final.

- (6) **assist in the process of identifying and returning** any person who may not or no longer fulfil the conditions for entry to, stay or residence in the Member States;
- (7) help **law enforcement authorities access** data of applicants for and holders of short-stay visas (which is already possible under current rules), and extend this access to holders long-stay visas and residence permits, where necessary for the prevention, investigation, detection or prosecution of serious crime and terrorism, while ensuring high standards of data protection and privacy;
- (8) gather statistics to support evidence-based European Union migration policy making.

## **2. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

### **• Ex-post evaluations/fitness checks of existing legislation**

A REFIT evaluation<sup>20</sup> of the VIS was carried out in 2016 and led to a number of recommendations to improve the functioning of the system. These recommendations provided a basis for this proposal.

Overall, the VIS evaluation showed that the system is effective in meeting its objectives. However, it demonstrated a need to further develop the VIS to better respond to new challenges in visa, border and security policies. This could be done by interconnecting with existing and upcoming IT systems and exploring ways to have information on long-stay visas, including biometrics, registered in the VIS. The evaluation also showed the need for improvements, in particular in relation to the monitoring of data quality and the production of statistics.

Most of the issues identified by the evaluation were of a technical nature and serve to further align the system with the new legislative proposals in this area. They mainly concern:

- 1) improving data quality;
- 2) integrating the VISMail functionality into the VIS;
- 3) centralising the consultation and representation functions;
- 4) providing support for facial image recognition or use of latent fingerprints; and
- 5) setting up a reporting and statistics engine based on VIS data.

Between October 2016 and July 2017, eu-LISA carried out a study on all envisaged technical impacts resulting from the VIS evaluation. A detailed assessment of the impact of these technical improvements was therefore not needed.

However, several issues identified in the evaluation required not only a technical analysis, but also further analysis of the possible solutions that would address them and their impacts:

- the difficulties in completing procedures to return irregular migrants to their countries of origin if travel documents are missing;

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<sup>20</sup> COM(2016) 655, SWD (2016) 327, SWD (2016) 328.

- the risks of irregular migration and visa fraud, in particular trafficking in human beings and other abuse involving children under 12 years old, when applying for a visa;
  - the difficulties for border or migration authorities in verifying long-stay visas and residence permits and their holders;
  - the information gap on checks for irregular migration and security risks when processing visa applications.
  - the need to consider the possibility when processing visas to automatically consult other databases in the area of security and borders. This should take into account developments since the 2016 evaluation regarding EU information systems for border management and security and ensure compliance with recently adopted Commission proposals (EES) and proposed new developments and systems (recast Eurodac proposal, ETIAS, ECRIS-TCN, interoperability).
- **Consultation of interested parties**

Annex 2 of the accompanying impact assessment sets out a detailed description of the stakeholder consultation. The Commission contracted three independent studies: one on the feasibility, necessity and proportionality of lowering the fingerprinting age for children in the visa procedure and on storing a copy of the travel document of the visa applicants in the VIS, and two studies on the feasibility and on the necessity and proportionality of extending the VIS to include data on long-stay visas and residence documents (i.e. residence permits and residence cards). These studies also involved targeted consultations of all concerned stakeholders, including national authorities that have access to enter, amend, delete or consult data in the VIS, national authorities responsible for migration, return, child protection authorities, police and anti-trafficking authorities, authorities responsible for consular affairs, and national authorities responsible for checks at external border crossing points. Various non-EU authorities and non-governmental organisations involved in children's rights were also consulted.

In 2017-2018 the Commission carried out two open public consultations, the first from 17 August 2017 to 9 November 2017 on the issue of lowering the fingerprinting age for children in the visa procedure and the second one from 17 November 2017 to 9 December 2018 on extending the VIS to include data on long-stay visas and residence documents.

The European Data Protection Supervisor provided its views on the issue of lowering the fingerprinting age for children on 9 November 2017 and on the issue of extending the VIS to include data on long stay visas and residence documents on 9 February 2018.

The EDPS and the Fundamental Rights Agency have provided their views on various aspects of the proposal during targeted interviews as part of the stakeholder consultations conducted in the preparation of the impact assessment.

• **Impact assessment**

An impact assessment<sup>21</sup> was carried out in 2018, focusing on those issues needing further assessment to draft this proposal. It was based on three independent studies contracted out by the Commission and carried out in 2017 and 2018. The findings of eu-LISA's study on the technical feasibility of all possible VIS developments, which was carried out in November 2016 and February

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<sup>21</sup> SWD(2018) 195.

2017, and the feasibility study on integrated border management for people not recorded in the EES (ETIAS study) were also taken into account.

The impact assessment looked into alternative options for:

- including a digital copy of the travel document in the VIS (in a centralised or decentralised manner), considering two sub-options: storing only the biographical page or storing all used pages of the applicant's travel document;
- lowering the fingerprinting age of children, considering two sub-options: lowering the fingerprinting age to six years or lowering the fingerprinting age to include all ages;
- including data on long-stay visas and residence documents in the VIS, with legislative options including further harmonising and securing long-stay and residence documents; creating an interconnection between national databases that would allow all Member States to search each other's relevant national databases; integrating documents in the VIS with or without data on rejected applications;
- ensuring automated migration and security checks against available databases.

This proposal follows the preferred options of the impact assessment as regards the first (storing a copy of the biographical page of the travel document), the second (lowering the fingerprinting age to 6 years) and the fourth measure above. As regards the inclusion of long-stay visas and residence documents in the VIS, information on residence cards issued to the family members of EU citizens with the right of free movement under Union law is not included in this proposal given the rights of these third country nationals stemming from their family relationship with an EU citizen. Moreover, the proposal presented by the Commission on 17 April 2018 strengthened the security of such residence cards.

The Regulatory Scrutiny Board reviewed the draft impact assessment and delivered a positive opinion on 23 April 2018.

### **3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

#### **• Summary of the proposed actions**

The purpose, functionalities and responsibilities of the VIS must be further defined to take into account the expansion of the system to include data related to holders of long-stay visas and residence permits. This VIS must also be expanded so that the categories of data on applications for short-stay visas include storing copies of travel documents, and must integrate new functionalities such as the repository for reporting and statistics or the VISMail<sup>22</sup>. This means that the rules setting out the procedure for processing visa applications in the Visa Code must be amended. Access of law enforcement authorities of the Member States and of Europol to VIS has been established by Council Decision [2008/633/JHA](#). This Decision, which predates the Lisbon Treaty, regulated law enforcement access in the framework of the former so called "third pillar" of the Treaty on European Union. As this "third pillar" no longer exists as such in the current Treaties, the Commission considers that the current proposal provides the opportunity to integrate the content of this Decision into the VIS Regulation. As the VIS will be expanded to contain information on long-

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<sup>22</sup> Under Article 16 of Regulation (EC) No [767/2008](#), VISMail is a mechanism for information exchange and consultation between Member States central authorities, based on VIS infrastructure.



stay visas and residence permits, the required further development and operational management of the system will be entrusted to the Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA).

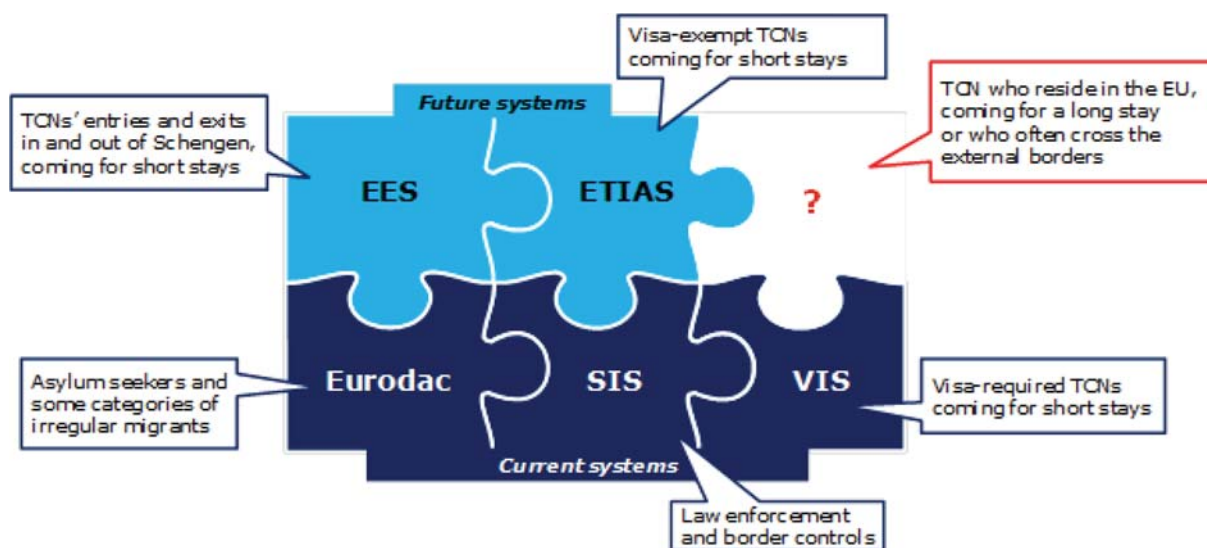
Consequently, amendments will need to be made to Regulation (EC) No 810/2009 (the Visa Code), Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 (the EES Regulation), Regulation (EU) XX [the Interoperability Regulation] and Regulation (EU) 2016/399 (the Schengen Borders Code).

The main objectives of the proposal can be summarised as follows:

### **Closing remaining information gaps for borders and security: include long-stay visas and residence documents in the VIS**

The final report of the High-level expert group<sup>23</sup> identified an information gap at EU level concerning the documents that allow third country nationals to stay on the territory of a given EU Member State for longer than 90 days in any 180 days<sup>24</sup>. Data on these documents and their holders are currently not collected and the data cannot be verified through any of the EU large-scale IT systems in the area of border and security (except SIS, to a limited extent). Member States consider that the current management of these documents can hamper the border crossing of third country nationals and their subsequent free movement in the area without internal border controls.

Third country nationals who are coming to the EU for a long stay are the only category of third country nationals not covered by any of the EU large-scale IT systems (as illustrated in the figure below). Including long-stay visas and residence permits in the VIS would ensure that information about these documents and their holders is included in one of the large-scale EU IT systems, and under the same rules as for documents issued to them either under visa-free conditions (data already in ETIAS and EES) and visa-required (third country nationals coming for a short stay, whose data are already in VIS and EES). This will enable Member State authorities other than the issuing authority to check that document and its holder at the borders or within the territory of the Member States.



<sup>23</sup> The High-level expert group was set up by the Commission in June 2017 as an advisory body to improve the EU's data management architecture for border control and security. Its final report was adopted on 11 May 2017.

<sup>24</sup> For example, long-stay visas and residence documents (including both residence permits and residence cards).

By facilitating a systematic and better exchange of information among Member States on third country nationals holding long-stay visas and residence permits, the VIS would help improve the internal security of the Schengen area. If records of long-stay or residence permits are placed in a central system and made accessible to all relevant Member State authorities, each Member State will be able to make a more precise and impartial assessment of the security risk, based on the records found in the system when checking the document holders at border crossing points and in the territory of the Member States.

Moreover, including these documents in a centralised system will help detect fraud linked to obtaining authentic documents on the basis of false breeder documents.

Facilitating a better and systematic exchange of information among Member States would also minimise administrative burden and overcome the language barrier when contacting another Member State to verify the authenticity of a document presented by a third country national.

When deciding whether to issue or extend a long-stay visa or residence permit, a number of automated checks will be launched using the interoperability components (the ESP) to detect whether an EU or Interpol database contains any evidence that the person could pose a threat to the security of one of the Member States. The Member State issuing the document will have to follow up on any hit in accordance with existing EU and national law.

### **Enhancing checks in visa processing using interoperability**

Under the current rules, consulates are only obliged to check travellers under a visa obligation in the Schengen Information System to determine whether a visa applicant is subject to an entry ban. There is currently no obligation to check visa applicants against any other available EU databases (e.g. EURODAC), or against Interpol's Stolen and Lost Travel Documents database and Travel Documents Associated with Notices database<sup>25</sup>.

Once in place, the European Search Portal will allow competent authorities — including visa processing authorities — to carry out a single search and receive results from all systems they are authorised to access (including EURODAC, EES and the European Criminal Records Information System — Third Country Nationals) rather than searching in each system individually. The European Search Portal will make it easier to detect security and irregular migration risks in the visa procedure by enabling visa officers to perform quick and efficient background checks on visa applicants.

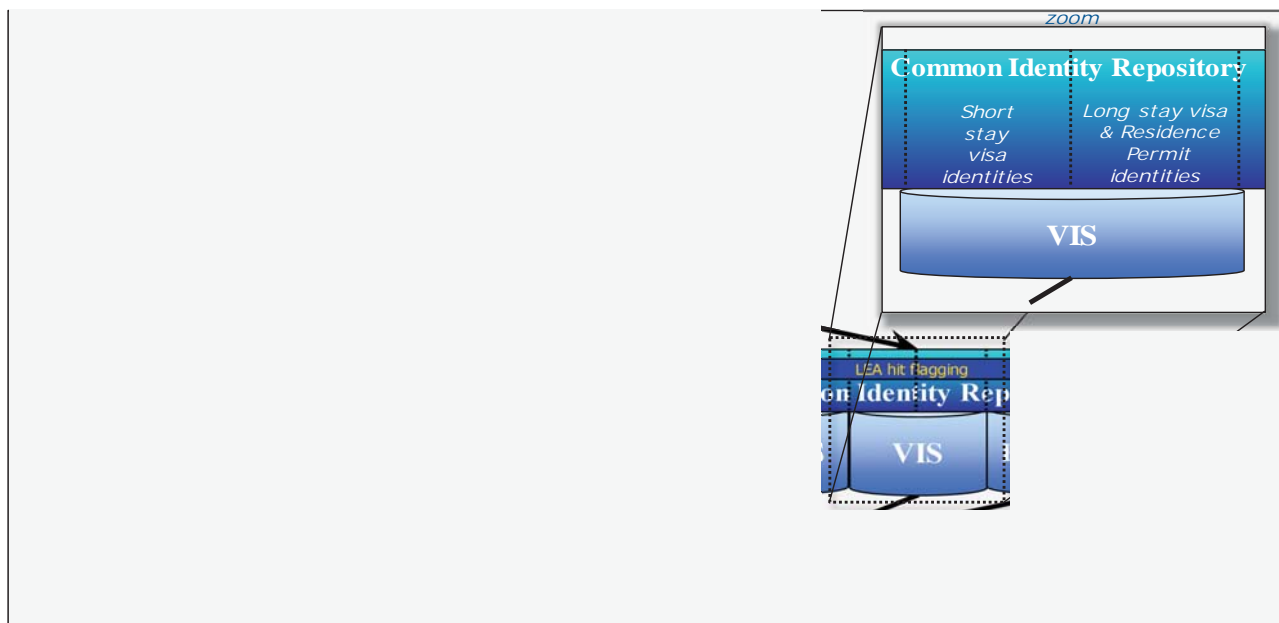
The interoperability proposal also aims to make it easier to detect multiple identities and counter identity fraud. Using this interoperability feature, the visa authority processing an application will be notified automatically if the applicant is known under different identities and will be able to take the appropriate course of action.

Since the VIS is also part of the legal framework setting up interoperability, technical possibilities have opened up to ensure the practical communication between various databases in a fast, seamless and systematic manner by authorised users. Enabling the visa authorities to carry out automated checks against other databases using the European Search Portal makes this the first time that the interoperability framework has been applied in practice.

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<sup>25</sup> Interpol's Stolen and Lost Travel Documents database (SLTD) and the Travel Documents Associated with Notices (TDAWN) database contain information on travel documents linked to individuals who are subject to an Interpol notice.

When verifying and assessing the information submitted by applicants, the VIS will automatically query each application against each of the above systems.



In addition to automated queries of other databases, visa processing will benefit from specific risk indicators. The indicators will contain data analytics rules, as well as specific values provided by Member States and statistics generated from other relevant border management and security databases. This would improve risk assessments and allow the data-analytics method to be applied. The risk indicators would not contain any personal data and would be based on statistics and information provided by Member States on threats, abnormal rates of refusal or overstay by certain categories of third country nationals, and public health risks.

The introduction of systematic checks for security and migration in connection to VIS data builds on the benefits opened up by the interoperability framework.

### **Making it easier to identify missing persons**

Situations may occur where persons need to be identified in their own interest – because they were lost, missing, or identified as victims of trafficking. The possibility for the police authority to identify a person with the biometric data of that person taken during an identity check has been provided within the interoperability framework, where the national law allows. However, such access would not be sufficiently effective in the specific circumstances as the ones described above. For this purpose, quick access should be given for law enforcement authorities to VIS data to enable a fast and reliable identification of the person, without the need to fulfill all the preconditions and additional safeguards for law enforcement access.

### **Addressing remaining information gaps in short-stay visa processing: lowering the fingerprinting age of applicants and storing copies of travel documents in the VIS to support return procedures**

- *Lowering the fingerprinting age for child applicants from 12 years to 6 years*

This measure will allow officials to verify a child's identity in the visa application procedure, and will enable checks when crossing an external border. Furthermore, by making it possible to unambiguously identify children, the measure will better protect children and help fight against trafficking and irregular migration while keeping the child's best interests at the fore. Additional

safeguards are introduced in law in order to ensure that the best interests of the child are preserved throughout the visa processing procedure and in any subsequent use of children's data.

Fingerprints will be taken from every visa applicant from 6 years of age and above, thereby increasing the group of applicants for short-stay visas by adding the 6 to 11 year-old age-group.

When Regulation (EC) No 810/2009 was adopted, it was recognised that the issue of the sufficient reliability for identification and verification purposes of the fingerprints of children under 12 and, in particular, how fingerprints evolve with age, would have to be addressed at a later stage. In 2013, the European Commission's Joint Research Centre (JRC)<sup>26</sup> therefore carried out a study into whether or not automated fingerprint recognition for children can produce recognition rates similar to those of adults. The JRC study concluded that fingerprint recognition of children aged between 6 and 12 years is achievable with a satisfactory level of accuracy under certain conditions. One such condition would, for example, be to ensure that operators receive an appropriate level of training to acquire high quality images.

A second study<sup>27</sup> confirmed this finding and provided further insight into the effect of aging on fingerprint quality. The Commission conducted a further study<sup>28</sup> looking into the necessity and proportionality of lowering the fingerprinting age for children in the visa procedure. This study found that lowering the fingerprinting age would help better achieve the VIS objectives, in particular in relation to facilitating the fight against identity fraud and streamlining checks at external border crossing points. It also found that lowering the fingerprinting age could bring additional benefits by strengthening the prevention and fight against abuses of children's rights, in particular by making it possible to identify or verify the identity of third country national children who are found in the territory of the Member States in a situation where their rights may be or have been violated (e.g. child victims of human trafficking, missing children and unaccompanied minors applying for asylum).

- *Storing a copy of the bio-page of the applicant's travel document in the VIS to support return procedures*

The proposal introduces a new category of data to be stored in the VIS when submitting a visa application. Currently Member States take copies of the applicant's travel document. However, there are no EU rules laying down uniform conditions for retaining or exchanging this information among Member States. Retaining a copy of the travel document will make it possible to run better checks of these documents and increase the efficiency of return procedures. Using the VIS to implement this measure would support the EU's return policy.

The competent authorities for identification (and/or verification within the territory) and return – namely migration and return authorities – which already have access to search the system using the fingerprints of the third country national, would be able to retrieve this copy, subject to strict access rules.

Under Article 2(e) of the VIS Regulation, one of the objectives of VIS is 'to assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States'. Article 31(2) enables the Member States to transfer or to make available a limited set of these data to a third country for the purpose of proving

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<sup>26</sup> JRC (2013). Fingerprint Recognition for Children.

<sup>27</sup> "Automatic fingerprint recognition: from children to elderly" (2018 – JRC).

<sup>28</sup> "Feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicant's travel document in the Visa Information System (VIS)" (2018).

the identity of third country nationals for the purpose of return.<sup>29</sup> The VIS has been further enhanced with this measure to help identify and return irregular migrants.<sup>30</sup>

### **Upgrading other technical components of the VIS**

The VISMail mechanism for consultations is integrated in the VIS in order to streamline the exchanges between the VIS central system and the national systems. The configuration of the central system is adapted to better respond to the need to rapidly and efficiently ensure availability in periods of disruption (i.e. back-up system turned into an active/active configuration).

To improve the quality of the data recorded in the VIS, indicators on data quality defects have been introduced at application level. Eu-LISA has been entrusted with the role of managing data quality checks in the VIS. A functionality has been included to ensure that the VIS refuses to launch a request for prior consultation until all appropriate information has been properly filled in. Another functionality makes it possible to distinguish between the cases where fingerprints are not required for legal reasons and the cases where they cannot be provided. To address problems in collecting biometrics, in particular those affecting the quality of facial images, alternative standards will be put in place, such as a direct collection of photographs (i.e. facial image taken live). A centralised technical solution is envisaged for prior consultation, representation and subsequent notification, enabling Member States to manage and update their own information regarding these functions.

#### **• Legal basis**

The legal basis consists of this Regulation consists of the following articles of the Treaty on the Functioning of the European Union: Article 16(2), Article 77(2)(a), (b), (d) and (e), Article 78(2)(d), (e) and (g), Article 79(2)(c) and (d), Article 87(2)(a) and Article 88(2)(a).

Under Article 77(2), (a), (b), (d) and (e) TFEU respectively, the European Parliament and the Council can adopt measures concerning the common policy on visas and other short-stay residence permits, the checks to which persons crossing external borders are subject, and any measure necessary for the gradual establishment of an integrated management system for external borders and the absence of any controls on persons, whatever their nationality, when crossing internal borders. This is the main legal basis for this proposed Regulation.

Under Article 16(2) TFEU, the Union has the power to adopt measures relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies and by Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. This Treaty provision is also an important legal basis for this proposal.

An ancillary objective of this proposal is to allow, under strict conditions, national law enforcement authorities and to Europol to access VIS data for law enforcement purposes. The proposal therefore also relies on Article 87(2)(a) and Article 88(2)(a) TFEU respectively. Both these additional legal bases command the same ordinary legislative procedure which is applicable under Article 77(2).

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<sup>29</sup> The Regulation allows the designated competent authorities to transfer the following data from the visa application file: first name, surname and former surname (if applicable); sex, data, place and country of birth; current nationality and nationality at birth; type and number of the travel document, the authority which issued it and the date of issue and of expiry; residence; and in the case of minors, the surname and first name(s) of the applicant's father and mother.

<sup>30</sup> [EMN Ad-Hoc Query on COM AHQ on Member States' Experiences with the use of the Visa Information System \(VIS\) for Return Purposes](#). Requested by the Commission on 18th March 2016. 24 responses were provided.

This proposal pursues a number of further ancillary objectives, such as contributing to the Dublin and asylum examination procedure, which are measures developed under Article 78(2)(d), (e) and (g) TFEU; helping identify and return third country nationals as part of the measures developed under Article 79(2)(c) TFEU, and supporting the identification of victims and combat trafficking in persons as part of the measures developed under Article 79(2)(d) TFEU. Those additional legal bases are also compatible with the main ones.

- **Subsidiarity principle**

Article 77(2)(a) TFEU empowers the Union to develop measures concerning ‘the common policy on visas and other short-stay residence permits.’ This proposal is within the limits set by this provision. The objective is to further develop and improve the rules on the electronic processing of applications for intended stays in the territory of Member States not exceeding 90 days in any 180-day period. This cannot be sufficiently achieved by the Member States acting alone, because only the Union can amend an existing Union Act (the VIS Regulation).

Freedom of movement within the area without internal border controls requires that its external borders are effectively managed to ensure security. Member States have therefore agreed to address these challenges collectively, especially by sharing information through centralised EU systems in the area of justice and home affairs. This is confirmed by the various conclusions that have been adopted by both the European Council and the Council, especially since 2015.

The absence of internal border controls requires sound management of the external borders, where each Member State or associated country has to control the external border on behalf of the others. No Member State can cope on its own with irregular migration and cross-border crime. Third country nationals who enter the area without internal border controls are able to travel freely within this area. In an area without internal borders, common action against irregular immigration and international crime and terrorism, including through the detection of identity fraud, should be taken and can only be successfully addressed at EU level.

Under Article 77(2)(b) of the Treaty on the Functioning of the European Union, the Union has the power to adopt measures relating to the checks on persons and efficient monitoring of the crossing of external borders of the Member States. Current EU law on the visa procedure needs to be modified to take into account the travel movements of third country nationals applying for a short-stay visa, in particular the recent EES provisions doing away with the stamping obligation and instituting an entry and exit record for the third country nationals admitted for a short stay, thus allowing Members States’ authorities to assess the lawful use of previous short stays in an area without internal border controls.

As regards long-stay visas and residence permits, Article 21 of the Schengen Convention provides for their mutual recognition as documents allowing their holders to move freely within the Schengen area for 90 days in any 180 days (i.e. similar to a short-stay visa), provided they fulfil the conditions in Article 6(1)(a), (c) and (e) of Regulation (EU) 2016/399 (the Schengen Borders Code). Various Council conclusions<sup>31</sup> have called for new measures to fill the information gaps for border management and law enforcement in relation to border crossings by holders of long-stay visas and residence permits, possibly by creating an EU repository of such data. Including data on these documents so that the data can be shared among Member States and the holder’s documents be verified at external borders or within the EU by Member States other than the one that issued a

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<sup>31</sup> Conclusions of 9 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems (ST/10151/17); Conclusions of June 2016 endorsing a roadmap to enhance information exchange and information management (9368/1/16 REV 1).

document and in order to verify whether the person could pose a threat to the security of one of the Member States responds to objectives set under Article 77 of the Treaty on the Functioning of the European Union.

Therefore, this objective of the proposal cannot be sufficiently achieved by the Member States acting alone and is better achieved at Union level.

- **Proportionality principle**

As explained in the impact assessment accompanying this proposal for a revised Regulation, the policy choices made in this proposal are considered proportionate. They do not go beyond what is necessary to achieve the agreed objectives.

Article 5 of the Treaty on the European Union states that action by the Union must not go beyond what is necessary to achieve the objectives of the Treaty. The form chosen for this EU action must enable the proposal to achieve its objective and be implemented as effectively as possible. The proposed initiative constitutes a further development of the rules on border-free travel in order to ensure that common rules at external borders are applied in the same way in all the Member States which have abolished controls at internal borders. It further builds on an instrument providing to the European Union information on third country nationals. It codifies and improves existing law enforcement authorities' access to the VIS information on these categories of third country nationals, which is a timely, accurate, secure and cost-efficient way to identify third country nationals suspected (or victims) of terrorism or a serious crime and to enable the authorities to consult the application history of third country nationals who are suspects (or victims) of such crimes.

The proposal has been designed around the 'data protection by design' principles and is proportionate in terms of the right to protection of personal data because it does not require the collection and storage of more data for a longer period than is absolutely necessary to allow the system to function and meet its objectives. In addition, the proposal will provide for and implement all the safeguards and mechanisms required for the effective protection of the fundamental rights of travellers, particularly their private life and personal data.

No further processes or harmonisation will be necessary at EU level to make the system work. The envisaged measure is therefore proportionate because it does not go beyond what is necessary in terms of action at EU level to meet the defined objectives.

The preferred option is also proportionate in terms of costs, taking into account the benefits the system will provide to all Member States in managing the common external border and progressing towards a common EU migration policy.

The proposal therefore complies with the proportionality principle.

- **Choice of instrument**

This proposal builds on an existing centralised system through which Member States cooperate with each other, and which requires a common architecture and operating rules. Moreover, it lays down rules on border checks at the external borders and on access to the system, including for the purpose of law enforcement, which are uniform for all Member States. As a consequence, only a Regulation can be chosen as a legal instrument.

## • Fundamental rights

The proposed Regulation has an impact on fundamental rights, notably on the right to dignity (Article 1 of the Charter of Fundamental Rights of the EU); the right to liberty and security (Article 6 of the Charter), respect for private and family life (Article 7 of the Charter), the protection of personal data (Article 8 of the Charter), the right to asylum and protection of the principle of non-refoulement (Articles 18 and 19 of the Charter) and protection in the event of removal, expulsion or extradition (Article 19 of the Charter), the right to non-discrimination (Article 21 of the Charter), the rights of the child (Article 24 of the Charter) and the right to an effective remedy (Article 47 of the Charter).

The 2008 VIS Regulation establishes strict rules on access to the VIS and the necessary safeguards. It also provides for individuals' rights of access, correction, deletion and redress (i.e. rectification, erasure and remedies in the terms of the General Data Protection Regulation<sup>32</sup>) in particular the right to a judicial remedy and the supervision of processing operations by public independent authorities. Additional safeguards are introduced by this proposal to cover the specific needs of the new categories of data, data processing and data subjects that will be covered by the VIS. Therefore, the proposal fully complies with the Charter of Fundamental Rights of the European Union, in particular as regards the right to the protection of personal data, and is also in line with Article 16 TFEU which guarantees everyone the right to protection of personal data concerning them.

## 4. BUDGETARY IMPLICATIONS

Following the technical study carried out by eu-LISA in 2016 on the technical modification to the VIS resulting from the REFIT exercise and the impact assessment, this proposal follows the option of extending the VIS to include data on long-stay visas and residence permits, to carry out automated checks against EU and Interpol databases for security and, as applicable, irregular migration checks, and to lower the fingerprinting age for children and store a copy of the bio-page of the travel document of the applicants in the VIS. The study assessed that this will require EUR 182 million. The development phase is expected between 2021 and 2023, so the necessary funds will be covered from the allocated amount under the next EU budget. If the proposal is adopted before the next financial framework, the necessary resources (estimated at EUR 1.5 million) will be financed from the ISF-Borders and Visa budget line and the amounts will be deducted from the money earmarked for 2021-2023. The EUR 1.5 million would be used to launch the preparatory work leading to the implementation of the measures set out in this proposal, such as those related to preparing the implementing acts and launching public procurement contracts. Should political agreement on this proposal be reached by March 2019 (i.e. under current legislature) the objective is to implement the proposal by end 2021.

The resources required for this proposal (both for the Border Management Fund and for each of the agencies concerned) are compatible with the Commission proposal for the 2021-2027 Multiannual Financial Framework of 2 May 2018. The costs linked to the implementation of this proposal are allocated as follows:

- EUR 105 million to eu-LISA (indirect management);

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<sup>32</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons 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) (OJ L 119, 4.5.2016, p. 1).



- EUR 45 million to the Member States, earmarked in their National Programmes (shared management);
- EUR 2 million to the European Border and Coast Guard Agency (EBCGA) (indirect management);
- EUR 30 million to Europol (indirect management).

The cost model applied is explained in Annex 3 - "Who is affected and how", Section 2 on "Summary of costs and benefits" and in Annex 4 "REFIT" of the Impact Assessment, as well as analysed more in-depth in the study on "Feasibility and Implications of Lowering the Fingerprinting age for Children", the study on "Storing a scanned copy of the visa applicants' travel document in the Visa Information System", the "Feasibility study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits" and the "Legal Analysis on the Necessity and Proportionality of Extending the Scope of the Visa Information System (VIS) to Include Data on Long Stay Visas and Residence Documents", supporting the Impact Assessment.

## 5. ADDITIONAL INFORMATION

- Implementation plans and monitoring, evaluation and reporting arrangements

The Commission will ensure the monitoring of the functioning of the VIS and evaluate its main policy objectives. Four years after the start of the application of the revised VIS Regulation and every four years thereafter, the Commission will submit a report to the European Parliament and to the Council. The report will present an overall evaluation of the functioning of the system, including its direct and indirect impacts and practical implementation on fundamental rights. It should examine results achieved against objectives, assess the progress with respect to the four main problem areas, and assess the continuing validity of the underlying rationale and any implications for future options. The implementation of the VIS is also evaluated through the Schengen evaluation mechanism in accordance with Council Regulation (EU) No 1053/2013<sup>33</sup>, without prejudice to the Commission's role as guardian of the Treaties (Article 17(1) TEU).

- **Variable geometry**

This proposal builds upon and develops the Schengen *acquis* regarding external borders and visas in that it concerns the crossing of external borders and the granting of short-stay visas.

This has the following consequences in relation to the Treaty protocols and the agreements regarding association with the development of the Schengen *acquis*:

**Denmark:** In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), Denmark does not take part in the adoption by the Council of measures pursuant to Title V of part Three of the TFEU.

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<sup>33</sup> Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of the Schengen *acquis*, OJ L 295, 6.11.2013, p. 27.

Given that this Regulation builds upon the Schengen *acquis*, Denmark must, 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.

**United Kingdom and Ireland:** In accordance with Articles 4 and 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union and Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland, and 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*, the United Kingdom and Ireland do not take part in Regulation (EC) No 767/2008 (the VIS Regulation) nor in any other of the legal instruments which are commonly known as the "Schengen *acquis*", i.e. the legal instruments organising and supporting the abolition of controls at internal borders and the flanking measures regarding the controls at external borders.

This Regulation constitutes a development of this *acquis*, and therefore, the United Kingdom and Ireland are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.

In line with the judgment of the Court of Justice in case C-482/08, *United Kingdom v. Council*<sup>34</sup>, the circumstance that this Regulation has Articles 87(2)(a) and Article 88(2)(a) as legal bases alongside Article 77(2)(b) and (d) TFEU does not affect the above conclusion, as the access for law enforcement purposes is ancillary to the establishment of the Visa Information System.

**Iceland and Norway:** The procedures laid down in the Association Agreement concluded by the Council and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* are applicable, since this proposal builds on the Schengen *acquis* as defined in Annex A to this Agreement<sup>35</sup>.

**Switzerland:** This Regulation constitutes a development of the provisions of the Schengen *acquis*, as provided for by the Agreement between the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis*<sup>36</sup>.

**Liechtenstein:** This Regulation constitutes a development of the provisions of the Schengen *acquis*, as provided for by 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*<sup>37</sup>.

**Croatia, Cyprus, Bulgaria and Romania:** The visa policy including the VIS is part of the Schengen *acquis* not yet applicable by Member States not yet fully applying this *acquis* according to their Acts of Accessions. A simplified regime for controls of persons at the external borders was introduced in accordance with Decision No 565/2014/EU of the European Parliament and of the

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<sup>34</sup> ECLI:EU:C:2010:631.

<sup>35</sup> OJ L 176, 10.7.1999, p. 36.

<sup>36</sup> OJ L 53, 27.2.2008, p. 52.

<sup>37</sup> OJ L 160, 18.6.2011, p. 19.

Council<sup>38</sup>. That regime is based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents, notably Schengen visas issued by the Member States applying the Schengen *acquis* in full as equivalent to their national visas for transit through or intended stays on their territories, not exceeding 90 days in any 180-day period. Council Decision (EU) 2017/1908 further allows Bulgaria and Romania access to consult, in a read-only mode, the VIS data without the right to enter, amend or delete data in the VIS, in order to facilitate their national visa application procedure and prevent fraud and any abuse of Schengen visas by verifying their validity and authenticity against the data stored in the VIS; to facilitate — with regard to third country nationals holding a short stay visa — checks at border crossing points at external borders and within the territory of the Member States; to facilitate the determination of the Member State responsible for applications for international protection; to facilitate the examination of such applications, and to increase the level of internal security in the territory of the Member States by facilitating the fight against serious crime and terrorism.

Since this Regulation constitutes a development of this *acquis*, in the sense of extending the VIS consultation and exchange of information to long-stay visas and residence permits, which are also recognised by these Member States as equivalent to their national visas for transit through or intended stays on their territories, Bulgaria and Romania should have access to consult the long-stay visas and residence permits for the same purposes as defined in Council Decision (EU) 2017/1908.

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<sup>38</sup> Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L 157, 27.5.2014, p. 23).

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union, and in particular, Article 16(2), Article 77(2)(a) (b), (d) and (e), Article 78(2)(d),(e) and (g), Article 79(2)(c), and (d), Article 87(2)(a) and Article 88(2)(a),

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<sup>39</sup>,

Having regard to the opinion of the Committee of the Regions<sup>40</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Visa Information System (VIS) was established by Council Decision 2004/512/EC<sup>41</sup> to serve as the technology solution to exchange visa data between Member States. Regulation (EC) No 767/2008 of the European Parliament and of the Council<sup>42</sup> laid down the VIS purpose, functionalities and responsibilities, as well as the conditions and procedures for the exchange of short-stay visa data between Member States to facilitate the examination of short-stay visa applications and related decisions. Regulation (EC) No 810/2009 of the European Parliament and of the Council<sup>43</sup> set out the rules on the registration of biometric identifiers in the VIS.

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<sup>39</sup> OJ C , , p. .

<sup>40</sup> OJ C , , p. .

<sup>41</sup> Council Decision 2004/512/EC of 8 June 2004 establishing the Visa information System (VIS) (OJ L 213, 15.6.2004, p. 5).

<sup>42</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

<sup>43</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

Council Decision 2008/633/JHA<sup>44</sup> laid down the conditions under which Member States' designated authorities and Europol may obtain access to consult the VIS for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences.

- (2) The overall objectives of the VIS are to improve the implementation of the common visa policy, consular cooperation and consultation between central visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order to: facilitate the visa application procedure; prevent 'visa shopping'; facilitate the fight against identity fraud; facilitate checks at external border crossing points and within the Member States' territory; assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States; facilitate the application of the Regulation (EU) No 604/2013 of the European Parliament and of the Council<sup>45</sup> and contribute to the prevention of threats to the internal security of any of the Member States.
- (3) The Communication of the Commission of 6 April 2016 entitled 'Stronger and Smarter Information Systems for Borders and Security'<sup>46</sup> outlined the need for the EU to strengthen and improve its IT systems, data architecture and information exchange in the area of border management, law enforcement and counter-terrorism and emphasised the need to improve the interoperability of IT systems. The Communication also identified a need to address information gaps, including on third country nationals holding a long-stay visa.
- (4) The Council endorsed a Roadmap to enhance information exchange and information management<sup>47</sup> on 10 June 2016. In order to address the existing information gap in the documents issued to third-country nationals, the Council invited the Commission to assess the establishment of a central repository of residence permits and long-stay visas issued by Member States, to store information on these documents, including on expiry dates and on their possible withdrawal. Article 21 of the Convention implementing the Schengen Agreement provides a right to free movement within the territory of the states party to the Agreement for a period of not more than 90 days in any 180 days, by instituting the mutual recognition of the residence permits and long stay visas issued by these States.

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<sup>44</sup> Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129).

<sup>45</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

<sup>46</sup> COM(2016) 205 final.

<sup>47</sup> Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area (9368/1/16 REV 1).

- (5) In Council Conclusions of 9 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems<sup>48</sup>, the Council acknowledged that new measures might be needed in order to fill the current information gaps for border management and law enforcement, in relation to border crossings by holders of long-stay visas and residence permits. The Council invited the Commission to undertake a feasibility study as a matter of priority for the establishment of a central EU repository containing information on long-stay visas and residence permits. On this basis, the Commission conducted two studies: the first feasibility study<sup>49</sup> concluded that developing a repository would be technically feasible and that re-using the VIS structure would be the best technical option, whereas the second study<sup>50</sup> conducted an analysis of necessity and proportionality and concluded that it would be necessary and proportionate to extend the scope of VIS to include the documents mentioned above.
- (6) The Communication of the Commission of 27 September 2017 on the 'Delivery of the European Agenda on Migration'<sup>51</sup> stated that the EU's common visa policy is not only an essential element to facilitate tourism and business, but also a key tool to prevent security risks and risks of irregular migration to the EU. The Communication acknowledged the need to further adapt the common visa policy to current challenges, taking into account new IT solutions and balancing the benefits of facilitated visa travel with improved migration, security and border management. The Communication stated that the VIS legal framework would be revised, with the aim of further improving the visa processing, including on data protection related aspects and access for law enforcement authorities, further expanding the use of the VIS for new categories and uses of data and to make full use of the interoperability instruments.
- (7) The Communication of the Commission of 14 March 2018 on adapting the common visa policy to new challenges<sup>52</sup> reaffirmed that the VIS legal framework would be revised, as part of a broader process of reflection on the interoperability of information systems.
- (8) When adopting Regulation (EC) No 810/2009, it was recognised that the issue of the sufficient reliability for identification and verification purposes of fingerprints of children under the age of 12 and, in particular, how fingerprints evolve with age, would have to be addressed at a later stage, on the basis of the results of a study carried out under the responsibility of the Commission. A study<sup>53</sup> carried out in 2013 by the Joint Research Centre concluded that fingerprint recognition of children aged between 6 and 12 years is achievable with a satisfactory level of accuracy under certain conditions. A second study<sup>54</sup> confirmed this finding in December 2017 and provided further insight into the effect of aging over fingerprint quality. On this basis,

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<sup>48</sup> Council Conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems (10151/17).

<sup>49</sup> "Integrated Border Management (IBM) – Feasibility Study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits" (2017).

<sup>50</sup> "Legal analysis on the necessity and proportionality of extending the scope of the Visa Information System (VIS) to include data on long stay visas and residence documents" (2018).

<sup>51</sup> COM(2017) 558 final, p.15.

<sup>52</sup> COM(2018) 251 final.

<sup>53</sup> Fingerprint Recognition for Children (2013 - EUR 26193).

<sup>54</sup> "Automatic fingerprint recognition: from children to elderly" (2018 – JRC).

the Commission conducted in 2017 a further study looking into the necessity and proportionality of lowering the fingerprinting age for children in the visa procedure to 6 years. This study<sup>55</sup> found that lowering the fingerprinting age would contribute to better achieving the VIS objectives, in particular in relation to the facilitation of the fight against identity fraud, facilitation of checks at external border crossing points, and could bring additional benefits by strengthening the prevention and fight against children's rights abuses, in particular by enabling the identification/verification of identity of third-country national (TCN) children who are found in Schengen territory in a situation where their rights may be or have been violated (e.g. child victims of trafficking in human beings, missing children and unaccompanied minors applying for asylum).

- (9) The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation. The child's well-being, safety and security and the views of the child shall be taken into consideration and given due weight in accordance with his or her age and maturity. The VIS is in particular relevant where there is a risk of a child being a victim of trafficking.
- (10) The personal data provided by the applicant for a short-stay visa should be processed by the VIS to assess whether the entry of the applicant in the Union could pose a threat to the public security or to public health in the Union and also assess the risk of irregular migration of the applicant. As regards third country nationals who obtained a long stay visa or a residence permit, these checks should be limited to contributing to assess the identity of the document holder, the authenticity and the validity of the long-stay visa or residence permit as well as whether the entry of the third country national in the Union could pose a threat to public security or to public health in the Union. They should not interfere with any decision on long-stay visas or residence permits.
- (11) The assessment of such risks cannot be carried out without processing the personal data related to the person's identity, travel document, and, as the case may be, sponsor or, if the applicant is minor, identity of the responsible person. Each item of personal data in the applications should be compared with the data present in a record, file or alert registered in an information system (the Schengen Information System (SIS), the Visa Information System (VIS), the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD), the Entry/Exit System (EES), the Eurodac, the ECRIS-TCN system as far as convictions related to terrorist offences or other forms of serious criminal offences are concerned and/or the Interpol Travel Documents Associated with Notices database (Interpol TDAWN)) or against the watchlists, or against specific risk indicators. The categories of personal data that should be used for comparison should be limited to the categories of data present in the queried information systems, the watchlist or the specific risk indicators.
- (12) Interoperability between EU information systems was established by [*Regulation (EU) XX on interoperability*] so that these EU information systems and their data supplement each other with a view to improving the management of the external borders, contributing to preventing and combating illegal migration and ensuring a

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<sup>55</sup> "Feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicant's travel document in the Visa Information System (VIS)" (2018).

high level of security within the area of freedom, security and justice of the Union, including the maintenance of public security and public policy and safeguarding the security in the territories of the Member States.

- (13) The interoperability between the EU information systems allows systems to supplement each other to facilitate the correct identification of persons, contribute to fighting identity fraud, improve and harmonise data quality requirements of the respective EU information systems, facilitate the technical and operational implementation by Member States of existing and future EU information systems, strengthen and simplify the data security and data protection safeguards that govern the respective EU information systems, streamline the law enforcement access to the EES, the VIS, the [ETIAS] and Eurodac, and support the purposes of the EES, the VIS, the [ETIAS], Eurodac, the SIS and the [ECRIS-TCN system].
- (14) The interoperability components cover the EES, the VIS, the [ETIAS], Eurodac, the SIS, and the [ECRIS-TCN system], and Europol data to enable it to be queried simultaneously with these EU information systems and therefore it is appropriate to use these components for the purpose of carrying out the automated checks and when accessing the VIS for law enforcement purposes. The European search portal (ESP) should be used for this purpose to enable a fast, seamless, efficient, systematic and controlled access to the EU information systems, the Europol data and the Interpol databases needed to perform their tasks, in accordance with their access rights, and to support the objectives of the VIS.
- (15) The comparison against other databases should be automated. Whenever such comparison reveals that a correspondence (a 'hit') exists with any of the personal data or combination thereof in the applications and a record, file or alert in the above information systems, or with personal data in the watchlist, the application should be processed manually by an operator in the responsible authority. The assessment performed by the responsible authority should lead to the decision to issue or not the short-stay visa.
- (16) Refusal of an application for a short-stay visa should not be based only on the automated processing of personal data in the applications.
- (17) Applicants who have been refused a short-stay visa on the basis of an information resulted from VIS processing should have the right to appeal. Appeals should be conducted in the Member State that has taken the decision on the application and in accordance with the national law of that Member State. Existing safeguards and rules on appeal in Regulation (EC) No 767/2008 should apply.
- (18) Specific risk indicators corresponding to previously identified security, irregular migration or public health risk should be used to analyse the application file for a short stay visa. The criteria used for defining the specific risk indicators should in no circumstances be based solely on a person's sex or age. They shall in no circumstances be based on information revealing a person's race, colour, ethnic or social origin, genetic features, language, political or any other opinions, religion or philosophical belief, trade union membership, membership of a national minority, property, birth, disability or sexual orientation..



- (19) The continuous emergence of new forms of security threats, new patterns of irregular migration and public health threats requires effective responses and needs to be countered with modern means. Since these means entail the processing of important amounts of personal data, appropriate safeguards should be introduced to keep the interference with the rights to respect for private and family life and to the personal data limited to what is necessary in a democratic society.
- (20) It should be ensured that at least a similar level of checks is applied to applicants for a short-stay visa, or third country nationals who obtained a long stay visa or a residence permit, as for visa free third country nationals. To this end a watchlist is also established with information related to persons who are suspected of having committed an act of serious crime or terrorism, or regarding whom there are factual indications or reasonable grounds to believe that they will commit an act of serious crime or terrorism should be used for verifications in respect of these categories of third country nationals as well.
- (21) In order to fulfil their obligation under the Convention implementing the Schengen Agreement, international carriers should be able to verify whether or not third country nationals holding a short-stay visa, a long stay visa or a residence permit are in possession of the required valid travel documents. This verification should be made possible through the daily extraction of VIS data into a separate read-only database allowing the extraction of a minimum necessary subset of data to enable a query leading to an ok/not ok answer.
- (22) This Regulation should define the authorities of the Member States which may be authorised to have access to the VIS to enter, amend, delete or consult data on long stay visas and residence permits for the specific purposes set out in the VIS for this category of documents and their holders, and to the extent necessary for the performance of their tasks.
- (23) Any processing of VIS data on long stay visas and residence permits should be proportionate to the objectives pursued and necessary for the performance of tasks of the competent authorities. When using the VIS, the competent authorities should ensure that the human dignity and integrity of the person, whose data are requested, are respected and should not discriminate against persons on grounds of sex, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.
- (24) It is imperative that law enforcement authorities have the most up-to-date information if they are to perform their tasks in the fight against terrorist offences and other serious criminal offences. Access of law enforcement authorities of the Member States and of Europol to VIS has been established by Council Decision 2008/633/JHA. The content of this Decision should be integrated into the VIS Regulation, to bring it in line with the current treaty framework.
- (25) Access to VIS data for law enforcement purpose has already proven its usefulness in identifying people who died violently or for helping investigators to make substantial progress in cases related to trafficking in human beings, terrorism or drug trafficking. Therefore, the data in the VIS related to long stays should also be available to the

designated authorities of the Member States and the European Police Office ('Europol'), subject to the conditions set out in this Regulation.

- (26) Given that Europol plays a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. Europol's current access to the VIS within the framework of its tasks should be codified and streamlined, taking also into account recent developments of the legal framework such as Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>56</sup>.
- (27) Access to the VIS for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for private and family life and to the protection of personal data of persons whose personal data are processed in the VIS. Any such interference must be in accordance with the law, which must be formulated with sufficient precision to allow individuals to adjust their conduct and it must protect individuals against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. Any interference must be necessary in a democratic society to protect a legitimate and proportionate interest and proportionate to the legitimate objective to achieve.
- (28) [Regulation 2018/XX on interoperability] provides the possibility for a Member State police authority which has been so empowered by national legislative measures, to identify a person with the biometric data of that person taken during an identity check. However specific circumstances may exist where identification of a person is necessary in the interest of that person. Such cases include situations where the person was found after having gone missing, been abducted or having been identified as victim of trafficking. In such cases, quick access for law enforcement authorities to VIS data to enable a fast and reliable identification of the person, without the need to fulfill all the preconditions and additional safeguards for law enforcement access, should be provided.
- (29) Comparisons of data on the basis of a latent fingerprint, which is the dactyloscopic trace which may be found at a crime scene, is fundamental in the field of police cooperation. The possibility to compare a latent fingerprint with the fingerprint data which is stored in the VIS in cases where there are reasonable grounds for believing that the perpetrator or victim may be registered in the VIS should provide the law enforcement authorities of the Member States with a very valuable tool in preventing, detecting or investigating terrorist offences or other serious criminal offences, when for example the only evidence at a crime scene are latent fingerprints.
- (30) It is necessary to designate the competent authorities of the Member States as well as the central access point through which the requests for access to VIS data are made and to keep a list of the operating units within the designated authorities that are

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<sup>56</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

authorised to request such access for the specific purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

- (31) Requests for access to data stored in the Central System should be made by the operating units within the designated authorities to the central access point and should be justified. The operating units within the designated authorities that are authorised to request access to VIS data should not act as a verifying authority. The central access points should act independently of the designated authorities and should be responsible for ensuring, in an independent manner, strict compliance with the conditions for access as established in this Regulation. In exceptional cases of urgency, where early access is necessary to respond to a specific and actual threat related to terrorist offences or other serious criminal offences, the central access point should be able to process the request immediately and only carry out the verification afterwards.
- (32) To protect personal data and to exclude systematic searches by law enforcement, the processing of VIS data should only take place in specific cases and when it is necessary for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences. The designated authorities and Europol should only request access to the VIS when they have reasonable grounds to believe that such access will provide information that will substantially assist them in preventing, detecting or investigating a terrorist offence or other serious criminal offence.
- (33) The personal data of holders of long stay documents stored in the VIS should be kept for no longer than is necessary for the purposes of the VIS. It is appropriate to keep the data related to third country nationals for a period of five years in order to enable data to be taken into account for the assessment of short-stay visa applications, to enable detection of overstay after the end of the validity period and in order to conduct security assessments of third country nationals who obtained them. The data on previous uses of a document could facilitate the issuance of future short stay visas. A shorter storage period would not be sufficient for ensuring the stated purposes. The data should be erased after a period of five years, unless there are grounds to erase them earlier.
- (34) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>57</sup> applies to the processing of personal data by the Member States in application of this Regulation. Processing of personal data by law enforcement authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties is governed by Directive (EU) 2016/680 of the European Parliament and of the Council<sup>58</sup>.

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<sup>57</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons 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) (OJ L 119, 4.5.2016, p. 1).

<sup>58</sup> Directive (EU) 2016/680 of the European parliament and the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

- (35) Members of the European Border and Coast Guard (EBCG) teams, as well as teams of staff involved in return-related tasks are entitled by Regulation (EU) 2016/1624 of the European Parliament and the Council to consult European databases where necessary for fulfilling operational tasks specified in the operational plan on border checks, border surveillance and return, under the authority of the host Member State. For the purpose of facilitating that consultation and enabling the teams an effective access to the data entered in VIS, the ECBGA should be given access to VIS. Such access should follow the conditions and limitations of access applicable to the Member States' authorities competent under each specific purpose for which VIS data can be consulted.
- (36) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with Directive 2008/115/EC of the European Parliament and of the Council<sup>59</sup>, is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.
- (37) The third countries of return are often not subject to adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679 or under national provisions adopted to transpose Article 36 of Directive (EU) 2016/680. Furthermore, the extensive efforts of the Union in cooperating with the main countries of origin of illegally staying third-country nationals subject to an obligation to return has not been able to ensure the systematic fulfilment by such third countries of the obligation established by international law to readmit their own nationals. Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679 or to the national provisions adopted to transpose Article 37 of Directive (EU) 2016/680, cover a limited number of such third countries and conclusion of any new agreement remains uncertain. In such situations, personal data could be processed pursuant to this regulation with third-country authorities for the purposes of implementing the return policy of the Union provided that the conditions laid down in Article 49(1)(d) of Regulation (EU) 2016/679 or in the national provisions transposing Article 38 or 39 of Directive (EU) 2016/680 are met.
- (38) Member States should make available relevant personal data processed in the VIS, in accordance with the applicable data protection rules and where required in individual cases for carrying out tasks under Regulation (EU) .../... of the European Parliament and the Council<sup>60</sup>, [Union Resettlement Framework Regulation], to the [European Union Asylum Agency] and relevant international bodies such as the United Nations High Commissioner for Refugees, the International Organisation on Migration and to the International Committee of the Red Cross refugee and resettlement operations, in relation to third-country nationals or stateless persons referred by them to Member States in the implementation of Regulation (EU) .../... [*the Union Resettlement Framework Regulation*].

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<sup>59</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

<sup>60</sup> Regulation (EU) .../... of the European Parliament and the Council [full title] (OJ L ..., ..., p. ...).

- (39) Regulation (EC) No 45/2001 of the European Parliament and the Council<sup>61</sup> applies to the activities of the Union institutions or bodies when carrying out their tasks as responsible for the operational management of VIS.
- (40) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on ...
- (41) In order to enhance third countries' cooperation on readmission of irregular migrants and to facilitate the return of illegally staying third country nationals whose data might be stored in the VIS, the copies of the travel document of applicants for a short stay visa should be stored in the VIS. Contrary to information extracted from the VIS, copies of travel documents are a proof of nationality more widely recognised by third countries.
- (42) Consultation of the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa, as established by Decision No 1105/2011/EU of the European Parliament and of the Council<sup>62</sup>, is a compulsory element of the visa examination procedure. Visa authorities should systematically implement this obligation and therefore this list should be incorporated in the VIS to enable automatic verification of the recognition of the applicant's travel document.
- (43) Without prejudice to Member States' responsibility for the accuracy of data entered into VIS, eu-LISA should be responsible for reinforcing data quality by introducing a central data quality monitoring tool, and for providing reports at regular intervals to the Member States.
- (44) In order to allow better monitoring of the use of VIS to analyse trends concerning migratory pressure and border management, eu-LISA should be able to develop a capability for statistical reporting to the Member States, the Commission, and the European Border and Coast Guard Agency without jeopardising data integrity. Therefore, a central statistical repository should be established. None of the produced statistics should contain personal data.
- (45) This Regulation is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council.<sup>63</sup>
- (46) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the need to ensure the implementation of a common policy on visas, a high level of security within the area without controls at the internal

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<sup>61</sup> Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>62</sup> Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).

<sup>63</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).

borders and the gradual establishment of an integrated management system for the external borders, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (47) This Regulation establishes strict access rules to the VIS and the necessary safeguards. It also foresees individuals' rights of access, rectification, erasure and remedies in particular the right to a judicial remedy and the supervision of processing operations by public independent authorities. Additional safeguards are introduced by this Regulation to cover for the specific needs of the new categories of data that will be processed by the VIS. This Regulation therefore respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to human dignity, the right to liberty and security, the respect for private and family life, the protection of personal data, the right to asylum and protection of the principle of non-refoulement and protection in the event of removal, expulsion or extradition, the right to non-discrimination, the rights of the child and the right to an effective remedy.
- (48) Specific provisions should apply to third country nationals who are subject to a visa requirement, who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC. Article 21(1) of the Treaty on the Functioning of the European Union stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in Directive 2004/38/EC.
- (49) As confirmed by the Court of Justice of the European Union, such family members have not only the right to enter the territory of the Member State but also to obtain an entry visa for that purpose. Member States must grant such persons every facility to obtain the necessary visas which must be issued free of charge as soon as possible and on the basis of an accelerated procedure.
- (50) The right to obtain a visa is not unconditional as it can be denied to those family members who represent a risk to public policy, public security or public health pursuant to Directive 2004/38/EC. Against this background, the personal data of family members can only be verified where the data relate to their identification and their status only insofar these are relevant for assessment of the security threat they could represent. Indeed, the examination of their visa applications should be made exclusively against the security concerns, and not those related to migration risks.
- (51) 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 Treaty on 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.

- (52) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC<sup>64</sup>; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (53) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>65</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (54) 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 latter's association with the implementation, application and development of the Schengen *acquis*<sup>66</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>67</sup>.
- (55) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of 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*<sup>68</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>69</sup> and with Article 3 of Council Decision 2008/149/JHA<sup>70</sup>.
- (56) As regards Liechtenstein, this Regulation 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

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<sup>64</sup> 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* (OJ L 131, 1.6.2000, p. 43).

<sup>65</sup> 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* (OJ L 64, 7.3.2002, p. 20).

<sup>66</sup> OJ L 176, 10.7.1999, p. 36.

<sup>67</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application 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* (OJ L 176, 10.7.1999, p. 31).

<sup>68</sup> OJ L 53, 27.2.2008, p. 52.

<sup>69</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of 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* (OJ L 53, 27.2.2008, p. 1).

<sup>70</sup> Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of 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* (OJ L 53, 27.2.2008, p. 50).

development of the Schengen *acquis*<sup>71</sup> which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>72</sup> and with Article 3 of Council Decision 2011/349/EU.<sup>73</sup>

- (57) This Regulation, with the exception of Article 22r, 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, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession, with the exception of provisions rendered applicable to Bulgaria and Romania by Council Decision (EU) 2017/1908<sup>74</sup>,

HAVE ADOPTED THIS REGULATION:

### *Article 1*

Regulation (EC) No 767/2008 is amended as follows:

- (1) In **Article 1** the following paragraphs are added:

"This Regulation also lays down procedures for the exchange of information between Member States on long-stay visas and residence permits, including on certain decisions on long-stay visas and residence permits.

By storing identity, travel document and biometric data in the common identity repository (CIR) established by Article 17 of Regulation 2018/XX of the European Parliament and of the Council\* [Regulation 2018/XX on interoperability], the VIS contributes to facilitating and assisting in the correct identification of persons registered in the VIS."

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\* Regulation 2018/XX of the European Parliament and of the Council\* [Regulation 2018/XX on interoperability] (OJ L).";

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<sup>71</sup> OJ L 160, 18.6.2011, p. 21.

<sup>72</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

<sup>73</sup> Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and 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* relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

<sup>74</sup> Council Decision (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provision of the Schengen *acquis* relating to the Visa Information System in the Republic of Bulgaria and Romania (OJ L 269, 19.10.2017, p. 39).



(2) **Article 2** is replaced by the following:

*“Article 2  
Purpose of VIS*

1. The VIS shall have the purpose of improving the implementation of the common visa policy, consular cooperation and consultation between central visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order:

- (a) to facilitate the visa application procedure;
- (b) to prevent the bypassing of the criteria for the determination of the Member State responsible for examining the application;
- (c) to facilitate the fight against fraud;
- (d) to facilitate checks at external border crossing points and within the territory of the Member States;
- (e) to assist in the identification and return of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States;
- (f) to assist in the identification of persons who have gone missing;
- (g) to facilitate the application of Regulation (EU) No 604/2013 of the European Parliament and of the Council\* and of Directive 2013/32/EU of the European Parliament and of the Council\*\*;
- (h) to contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;
- (i) to contribute to the prevention of threats to the internal security of any of the Member States;
- (j) to ensure the correct identification of persons;
- (k) support the objectives of the Schengen Information System (SIS) related to the alerts in respect of third country nationals subject to a refusal of entry, persons wanted for arrest or for surrender or extradition purposes, on missing persons, on persons sought to assist with a judicial procedure and on persons for discreet checks or specific checks."

2. As regards long stay visas and residence permits, the VIS shall have the purpose of facilitating the exchange of data between Member States on the decisions related thereto, in order to:

- (a) support a high level of security by contributing to the assessment of whether the applicant is considered to pose a threat to public policy, internal security or public health prior to their arrival at the external borders crossing points;

- (b) enhance the effectiveness of border checks and of checks within the territory;
- (c) contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;
- (d) ensure the correct identification of persons;
- (e) facilitate the application of Regulation (EU) No 604/2013 and of Directive 2013/32/EU;
- (f) support the objectives of the Schengen Information System (SIS) related to the alerts in respect of third country nationals subject to a refusal of entry, persons wanted for arrest or for surrender or extradition purposes, on missing persons, on persons sought to assist with a judicial procedure and on persons for discreet checks or specific checks."

\* Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

\*\* Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).";

- (3) **Article 3** is deleted;
- (4) in **Article 4**, the following points are added:
  - (12) 'VIS data' means all data stored in the VIS Central System and in the CIR in accordance with Articles 9 to 14, 22c, to 22f;
  - (13) 'identity data' means the data referred to in Article 9(4)(a) and (aa);
  - (14) 'fingerprint data' means the data relating fingerprints that is stored in a VIS file;
  - (15) 'facial image' means digital image of the face;
  - (16) 'Europol data' means personal data processed by Europol for the purpose referred to in Article 18(2)(a) of Regulation (EU) 2016/794 of the European Parliament and of the Council\*;
  - (17) 'residence permit' means all residence permits issued by the Member States in accordance with the uniform format laid down by Council Regulation (EC) No 1030/2002\*\* and all other documents referred to in Article 2(16)(b) of Regulation (EU) 2016/399;
  - (18) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention;

- (19) 'national supervisory authority' as regards law enforcement purposes means the supervisory authorities established in accordance with Article 41 of Directive (EU) 2016/680 of the European Parliament and of the Council\*\*\*;
- (20) 'law enforcement' means the prevention, detection or investigation of terrorist offences or other serious criminal offences;
- (21) 'terrorist offences' mean the offences under national law which correspond or are equivalent to those referred to in Directive (EU) 2017/541 of the European Parliament and of the Council\*\*\*\*;
- (22) 'serious criminal offences' means the offences which correspond or are equivalent to those referred to in Article 2(2) of Council Framework Decision 2002/584/JHA\*\*\*\*\*, if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years.

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\* Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

\*\* Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157 15.6.2002, p. 1)

\*\*\* Directive (EU) 2016/680 of the European parliament and the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

\*\*\*\* Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

\*\*\*\*\* Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.1”);

- (5) **Article 5** is replaced by the following:

*“Article 5  
Categories of data*

1. Only the following categories of data shall be recorded in the VIS:

(a) alphanumeric data on the short stay visa applicant and on visas requested, issued, refused, annulled, revoked or extended referred to in Article 9(1) to (4) and Articles 10 to 14, alphanumeric data on long stay visa and residence permits issued, withdrawn, refused, annulled, revoked or extended referred to in Articles 22c, 22d, 22e and 22f, as well as information regarding the hits referred to in Articles 9a and 22b, and the results of verifications referred to in Article 9c(6);

(b) facial images referred to in Article 9(5) and Article 22c(2)(f);

(c) fingerprint data referred to in Article 9(6) and Article 22c(2)(g);

(d) links to other applications referred to in Article 8(3) and (4) and Article 22a(3)."

2. The messages transmitted by the VIS, referred to in Article 16, Article 24(2) and Article 25(2), shall not be recorded in the VIS, without prejudice to the recording of data processing operations pursuant to Article 34.

3. The CIR shall contain the data referred to in Article 9(4)(a) to (cc), Article 9(5) and 9(6), Article 22c(2)(a), to (cc), (f) and (g), and Article 22d(a) to (cc), (f) and (g). The remaining VIS data shall be stored in the VIS Central System."

(6) the following **Article 5a** is inserted:

*"Article 5a*

#### **List of recognised travel documents**

(1) The list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa, as established by Decision No 1105/2011/EU of the European Parliament and of the Council\*, shall be integrated in the VIS.

(2) The VIS shall provide the functionality for the centralised management of the list of recognised travel documents and of the notification of the recognition or non-recognition of the listed travel documents pursuant to Article 4 of Decision No 1105/2011/EU.

(3) The detailed rules on managing the functionality referred to in paragraph 2 shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).

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\* Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).";

(7) **Article 6** is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Access to the VIS for consulting the data shall be reserved exclusively for the duly authorised staff of the national authorities of each Member State and of the EU bodies which

are competent for the purposes laid down in Articles 15 to 22, Articles 22c to 22f, Articles 22g to 22j, as well as for the purposes laid down in Articles 20 and 21 of [*Regulation 2018/XX on interoperability*].

That access shall be limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued.";

(b) the following paragraph 4 is added:

"4. The VIS shall provide the functionality for the centralised management of this list."

(c) the following paragraph 5 is added:

"5. The detailed rules on managing the functionality for the centralised management of the list in paragraph 3 shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2)."

(8) In **Article 7** a new paragraph 3 is inserted:

"3. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation. The child's well-being, safety and security, in particular where there is a risk of the child being a victim of human trafficking in human beings, and the views of the child shall be taken into consideration and given due weight in accordance with his or her age and maturity."

(9) The title of **Chapter II** is replaced by the following:

“ENTRY AND USE OF DATA ON SHORY STAY VISA BY VISA  
AUTHORITIES”

(10) **Article 8** is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. When the application is admissible pursuant to Article 19 of Regulation (EC) No 810/2009, the visa authority shall create the application file within 2 working days, by entering the data referred to in Article 9 in the VIS, as far as those data are required to be provided by the applicant.";

(b) the following paragraph 1a is inserted:

"1a. Upon creation of the application file, the VIS shall automatically launch the query pursuant to Article 9a and return results.

(c) paragraph 5 is replaced by the following:

5. Where particular data are not required to be provided for legal reasons or factually cannot be provided, the specific data field(s) shall be marked as 'not applicable'. The absence of fingerprints should be indicated by "VIS0"; furthermore, the system shall permit a distinction to be made between the cases pursuant to Article 13(7)(a) to (d) of Regulation (EC) No 810/2009."

(11) **Article 9** is amended as follows:

(a) in point 4, points (a), (b) and (c) are replaced by the following:

- "(a) surname (family name); first name or names (given names); date of birth; nationality or nationalities; sex;
- (aa) surname at birth (former surname(s)); place and country of birth; nationality at birth;
- (b) the type and number of the travel document or documents and the three-letter code of the issuing country of the travel document or documents;
- (c) the date of expiry of the validity of the travel document or documents;
- (cc) the authority which issued the travel document and its date of issue;"

(b) point 5 is replaced by the following:

"5. the facial image of the applicant, in accordance with Article 13(1) of Regulation (EC) No 810/2009.";

(c) the following point 7 is added:

"7. a scan of the biographic data page.";

(d) the following two paragraphs are added:

"8. The facial image of third country nationals referred to in point 5 of the first paragraph shall have sufficient image resolution and quality to be used in automated biometric matching.

By way of derogation from the second paragraph, in exceptional cases where the quality and resolution specifications set for the enrolment of the live facial image in the VIS cannot be met, the facial image may be extracted electronically from the chip of the electronic Machine Readable Travel Document (eMRTD). In such cases, the facial image shall only be inserted into the individual file after electronic verification that the facial image recorded in the chip of the eMRTD corresponds to the live facial image of the third-country national concerned.";

(12) the following new **Articles 9a to 9d** are inserted:

#### *"Article 9a*

#### **Queries to other systems**

1. The application files shall be automatically processed by the VIS to identify hits. The VIS shall examine each application file individually.
2. When an application is created or a visa is issued, the VIS shall check whether the travel document related to that application is recognised in accordance to Decision No 1105/2011/EU, by performing an automatic search against the list of recognised travel documents referred to in Article 5a, and shall return a result.
3. For the purpose of the verifications provided for in Article 21(1) and Article 21(3)(a), (c) and (d) of Regulation (EC) No 810/2009, the VIS shall launch a query by using the European Search Portal defined in Article 6(1) [*of the Interoperability*

*Regulation*] to compare the relevant data referred to in point (4) of Article 9 of this Regulation to the data present in a record, file or alert registered in the VIS, the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), including the watchlist referred to in Article 29 of Regulation (EU) 2018/XX for the purposes of establishing a European Travel Information and Authorisation System], the Eurodac, [the ECRIS-TCN system as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned], the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD) and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN).

4. The VIS shall add a reference to any hit obtained pursuant to paragraph 3 to the application file. Additionally, the VIS shall identify, where relevant, the Member State(s) that entered or supplied the data having triggered the hit(s) or Europol, and shall record this in the application file.
5. For the purposes of Article 2(1)(k), the queries carried out under paragraph 3 of this Article shall compare the relevant data referred to in Article 15(2) to the data present in the SIS in order to determine whether the applicant is subject to one of the following alerts:
  - (a) an alert in respect of persons wanted for arrest for surrender purposes or extradition purposes;
  - (b) an alert in respect of missing persons;
  - (c) an alert in respect of persons sought to assist with a judicial procedure;
  - (d) an alert on persons and objects for discreet checks or specific checks.

#### *Article 9b*

#### **Specific provisions applicable to the queries to other systems for family members of EU citizens or of other third country nationals enjoying the right of free movement under Union law**

1. As regards third country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other, the automated checks in Article 9a(3) shall be carried out solely for the purpose of checking that there are no factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a risk to security or high epidemic risk in accordance with Directive 2004/38/EC.
2. The VIS shall not verify whether:
  - a) the applicant is currently reported as overstayer or whether he or she has been reported as overstayer in the past through consultation of the EES;
  - b) the applicant corresponds to a person whose data is recorded in the Eurodac.

3. Where the automated processing of the application as referred to in Article 9a(3) has reported a hit corresponding to a refusal of entry and stay alert as referred to in Article 24 of Regulation (EC) 1987/2006, the visa authority shall verify the ground for the decision following which this alert was entered in the SIS. If this ground is related to an illegal immigration risk, the alert shall not be taken into consideration for the assessment of the application. The visa authority shall proceed according to Article 25(2) of the SIS II Regulation.

### **Article 9c**

#### *Verification by the central authorities*

1. Any hit resulting from the queries pursuant to Article 9a(3) shall be manually verified by the central authority of the Member State processing the application.
2. Where manually verifying the hits, the central authority shall have access to the application file and any linked application files, as well as to all the hits triggered during the automated processing pursuant to Article 9a(3).
3. The central authority shall verify whether the identity of the applicant recorded in the application file corresponds to the data present in the VIS, or one of the consulted databases.
4. Where the personal data do not correspond, and no other hit has been reported during the automated processing pursuant to Article 9a(3), the central authority shall erase the false hit from the application file.
5. Where the data correspond to or where doubts remain concerning the identity of the applicant, the central visa authority processing the application shall inform the central authority of the other Member State(s), which were identified as having entered or supplied the data that triggered the hit pursuant to Article 9a(3). Where one or more Member States were identified as having entered or supplied the data that triggered such hit, the central authority shall consult the central authorities of the other Member State(s) using the procedure set out in Article 16(2).
6. The result of the verifications carried out by the central authorities of the other Member States shall be added to the application file.
7. By derogation from paragraph 1, where the comparison referred to in Article 9a(5) reports one or more hits, the VIS shall send an automated notification to the central authority of the Member State that launched the query to take any appropriate follow-up action.
8. Where Europol is identified as having supplied the data having triggered a hit in accordance with Article 9a(3), the central authority of the responsible Member State shall consult the Europol national unit for follow-up in accordance with Regulation (EU) 2016/794 and in particular its Chapter IV.

### **Article 9d**

#### *Responsibilities of Europol*



Europol shall adapt its information system to ensure that automatic processing of the queries referred to in Article 9a(3) and Article 22b(2) is possible."

(13) In Article 13, the following paragraph 4 is added:

"4. When the application file is updated pursuant to paragraphs 1 and 2, the VIS shall send a notification to the Member State that issued the visa, informing of the decision to annul or revoke that visa. Such notification shall be generated automatically by the central system and transmitted via the mechanism provided in Article 16.";

(14) **Article 15** is amended as follows:

(a) in paragraph 2, the following point (ea) is inserted:

"ea) facial image;"

(b) the following paragraph 2a is inserted:

"2a. The facial image referred to in point (ea) of paragraph 2 shall not be the only search criterion.";

(15) In **Article 16**, paragraphs 2 and 3 are replaced by the following:

"2. When an application file is created in the VIS regarding a national of a specific third country or belonging to a specific category of such nationals for which prior consultation is requested pursuant to Article 22 of Regulation (EC) No 810/2009, the VIS shall automatically transmit the request for consultation to the Member State or the Member States indicated.

The Member State or the Member States consulted shall transmit their response to the VIS, which shall transmit that response to the Member State which created the application.

Solely for the purpose of carrying out the consultation procedure, the list of Member States requiring that their central authorities be consulted by other Member States' central authorities during the examination of visa applications for uniform visas lodged by nationals of specific third countries or specific categories of such nationals, according to Article 22 of Regulation (EC) No 810/2009, and of the third country nationals concerned, shall be integrated into the VIS."

3. The procedure set out in paragraph 2 shall also apply to:

(a) the transmission of information pursuant to Article 25(4) on the issuing of visas with limited territorial validity, Article 24(2) on data amendments and Article 31 of Regulation (EC) No 810/2009 on ex post notifications;

(b) all other messages related to consular cooperation that entail transmission of personal data recorded in the VIS or related to it, to the transmission of requests to the competent visa authority to forward copies of travel documents pursuant to point 7 of Article 9 and other documents supporting the application and to the transmission of electronic copies of those documents, as well as to requests pursuant to Article 9c and Article 38(3). The competent visa authorities shall respond to any such request within two working days.";

(16) **Article 17** is deleted;

(17) the title of **Chapter III** is replaced by the following:

“ACCESS TO SHORT STAY VISA DATA BY OTHER AUTHORITIES”

(18) In **Article 18(6)** the second subparagraph is replaced by the following:

"The competent authorities for carrying out checks at borders at which the EES is operated shall verify the fingerprints of the visa holder against the fingerprints recorded in the VIS. For visa holders whose fingerprints cannot be used, the search mentioned under paragraph 1 shall be carried out with the alphanumeric data foreseen under paragraph 1 *in combination with the facial image.*";

(19) the following **Article 20a** is inserted:

*"Article 20a*

*Use of VIS data for the purpose of entering SIS alerts on missing persons and the subsequent access to those data*

1. Fingerprint data stored in the VIS may be used for the purpose of entering an alert on missing persons in accordance with Article 32(2) of Regulation (EU) ... of the European Parliament and of the Council\* [*Regulation (EU) on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters*]. In those cases, the exchange of fingerprint data shall take place via secured means to the **SIRENE** bureau of the Member State owning the data.
2. Where there is a hit against a SIS alert as referred to in paragraph 1, child protection authorities and national judicial authorities, including those responsible for the initiation of public prosecutions in criminal proceedings and for judicial inquiries prior to charge and their coordinating authorities, as referred to *in Article 43 of Regulation (EU) ... [COM(2016) 883 final – SIS LE]*, may request, in the performance of their tasks, access to the data entered in VIS. The conditions provided for in Union and national legislation shall apply.

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\* Regulation (EU) .. of the European Parliament and of the Council of ... (OJ L .., p. ...).";

(20) in **Article 22**, paragraph 2 is replaced by the following:

"2. If the search with the data listed in paragraph 1 indicates that data on the applicant for international protection is recorded in the VIS, the competent asylum authority shall have access to consult the following data of the applicant and of any linked application files of the applicant pursuant to Article 8(3), for the sole purpose referred to in paragraph 1:

- (a) the application number;
- (b) the data taken from the application form(s), referred to in points (4), (5) and (7) of *Article 9*;
- (c) photographs;

(d) the data entered in respect of any visa issued, annulled, revoked, or whose validity is extended, referred to in Articles 10, 13 and 14;

(e) the data referred to in points (4) and (5) of Article 9 of the linked application files pursuant to Article 8(4).";

(21) **Article 23** is replaced by the following:

*"Article 23*

*Retention period for data storage*

1. Each file shall be stored in the VIS for a maximum of five years, without prejudice to the deletion referred to in Articles 24 and 25 and to the keeping of records referred to in Article 34.

That period shall start:

(a) on the expiry date of the visa, the long-stay visa or *the residence permit*, if a visa, a long-stay visa or a *residence permit* has been issued;

(b) on the new expiry date of the visa, the long-stay visa or *the residence permit*, if a visa, a long-stay visa or a *residence permit* has been extended;

(c) on the date of the creation of the application file in the VIS, if the application has been withdrawn, closed or discontinued;

(d) on the date of the decision of the *responsible* authority if a visa, a long-stay visa or a *residence permit* has been refused, annulled, shortened, withdrawn or revoked, *as applicable*.

2. Upon expiry of the period referred to in paragraph 1, the VIS shall automatically erase the file and the link(s) to this file as referred to in Article 8(3) and (4) and *Article 22a22a(3) and (5)*.";

(22) **in Article 24, paragraph 2** is replaced by the following:

"2. If a Member State has evidence to suggest that data processed in the VIS are inaccurate or that data were processed in the VIS contrary to this Regulation, it shall inform the Member State responsible immediately. Such message shall be transmitted in accordance with the procedure in Article 16(3).

Where the inaccurate data refers to links created pursuant to Article 8(3) or (4), and Article 22a(3), the responsible Member State shall make the necessary verifications and provide an answer within 48 hours, and, as the case may be, rectify the link. If no answer is provided within the set timeframe, the requesting Member State shall rectify the link and notify the responsible Member State of the rectification made via VISMail.";

(23) **Article 25** is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Where, before expiry of the period referred to in Article 23(1), an applicant has acquired the nationality of a Member State, the application files, the files and the links referred to in Article 8(3) and (4), *Article 22a(3)* relating to him or her shall be erased without delay from the VIS by the Member State which created the respective application file(s) and links.";

(b) in paragraph 2, the words "infrastructure of the VIS" are replaced by "the VISMail".

(24) in **Article 26**, the following paragraph *8a* is inserted:

"*8a.* Eu-LISA shall be permitted to use anonymised real personal data of the VIS production system for testing purposes in the following circumstances:

(a) for diagnostics and repair when faults are discovered with the Central System;

(b) for testing new technologies and techniques relevant to enhance the performance of the Central System or transmission of data to it.

In such cases, the security measures, access control and logging activities at the testing environment shall be equal to the ones for the VIS production system. Real personal data adopted for testing shall be rendered anonymous in such a way that the data-subject is no longer identifiable.";

(25) **Article 27** is replaced by the following:

*"Article 27*

*Location of the central Visa Information System*

The principal central VIS, which performs technical supervision and administration functions, shall be located in Strasbourg (France) and a back-up central VIS, capable of ensuring all functionalities of the principal central VIS, shall be located in Sankt Johann im Pongau (Austria).

Both sites may be used simultaneously for active operation of the VIS provided that the second site remains capable of ensuring its operation in case of failure of the system.";

(26) **Article 29** is amended as follows:

(a) the title is replaced by the following:

"Responsibility for the use *and quality* of data";

(b) in paragraph 1, point (c) is replaced by the following:

"(c) the data are accurate, up-to-date and of an adequate level of quality and completeness when they are transmitted to the VIS.";

(c) in point (a) of paragraph 2, the word "VIS" is replaced by the words "VIS or the CIR" in both instances where it appears;

(d) the following paragraph *2a* is inserted:

"*2a.* The management authority together with the Commission shall develop and maintain automated data quality control mechanisms and procedures for carrying out quality checks on

the data in VIS and shall provide regular reports to the Member States. The management authority shall provide a regular report to the Member states and Commission on the data quality controls.

This mechanism, procedures and the interpretation of data quality compliance shall be established by means of implementing measures in accordance with the procedure referred to in Article 49(2).";

(27) the following **Article 29a** is inserted:

*“Article 29a  
Specific rules for entering data*

1. Entering data referred to in Articles 9, 22c and 22d into the VIS shall be subject to the following preliminary conditions:

(a) data pursuant to Articles 9, 22c and 22d and Article 6(4) may only be sent to the VIS following a quality check performed by the responsible national authorities;

(b) data pursuant to Articles 9, 22c and 22d and Article 6(4) will be processed by the VIS, following a quality check performed by the VIS pursuant to paragraph 2.

2. Quality checks shall be performed by VIS, as follows:

(a) when creating application files or files of third country nationals in VIS, quality checks shall be performed on the data referred to in Articles 9, 22c and 22d ; should these checks fail to meet the established quality criteria, the responsible authority(ies) shall be automatically notified by the VIS;

(b) the automated procedures pursuant to Article 9(a)(3) and 22b(2) may be triggered by the VIS only following a quality check performed by the VIS pursuant to this Article; should these checks fail to meet the established quality criteria, the responsible authority(ies) shall be automatically notified by the VIS;

(c) quality checks on facial images and dactylographic data shall be performed when creating application files of third country nationals in VIS, to ascertain the fulfilment of minimum data quality standards allowing biometric matching;

(d) quality checks on the data pursuant to Article 6(4) shall be performed when storing information on the national designated authorities in the VIS.

3. Quality standards shall be established for the storage of the data referred to in paragraph 1 and 2 of this Article. The specification of these standards shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).”;

(28) in **Article 31**, paragraphs 1 and 2 are replaced by the following:

“1. Without prejudice to Regulation (EU) 2016/679, the data referred to in Article 9(4)(a), (b), (c), (k) and (m); 9(6) and 9(7) may be transferred or made available to a third country or to an international organisation listed in the Annex, only if necessary in individual cases for the purpose of proving the identity of third-country nationals, and only for the purpose of return

in accordance with Directive [2008/115/EC](#) or of resettlement in accordance with the *Regulation ...[Resettlement Framework Regulation]*, and provided that the Member State which entered the data in the VIS has given its approval.";

(29) **Article 34** is replaced by the following:

*"Article 34  
Keeping of logs*

1. Each Member State, the European Border and Coast Guard Agency and the Management Authority shall keep logs of all data processing operations within the VIS. These logs shall show the purpose of access referred to in Article 6(1), Article 20a(1), Article 22k(1) and Articles 15 to 22 and *22g to 22j*, the date and time, the type of data transmitted as referred to in Articles 9 to 14, the type of data used for interrogation as referred to in Article 15(2), Article 18, Article 19(1), Article 20(1), Article 21(1), Article 22(1), Article 22g, *Article 22h, Article 22i, Article 22j*, Article 45a, and Article 45d and the name of the authority entering or retrieving the data. In addition, each Member State shall keep logs of the staff duly authorised to enter or retrieve the data.

2. For the operations listed in Article 45b a log of each data processing operation carried out within the VIS and the EES shall be kept in accordance with this Article and Article 41 of the Regulation (EU) [2226/2017](#) establishing an Entry/Exit System (EES).

3. Such *logs* may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security. The logs shall be protected by appropriate measures against unauthorised access and deleted after a period of one year after the retention period referred to in Article 23(1) has expired, if they are not required for monitoring procedures which have already begun.";

(30) **Article 37** is amended as follows:

(a) in paragraph 1, the introductory sentence 1 is replaced by the following:

“Third country nationals and the persons referred to in Articles 9(4)(f), 22c(2)(e) or 22d(e) shall be informed of the following by the Member State responsible:”;

(b) paragraph 2 is replaced by the following:

"2. The information referred to in paragraph 1 shall be provided in writing to the third country national when the data, the photograph and the fingerprint data as referred to in points (4), (5) and (6) of Article 9, Article 22c(2) and Article 22d (a) to (g) are collected, and where necessary, orally, in a language and manner that the data subject understands or is reasonably presumed to understand. Children must be informed in an age-appropriate manner, using leaflets and/or infographics and/or demonstrations specifically designed to explain the fingerprinting procedure.";

(c). in paragraph 3, the second subparagraph is replaced by the following:

“In the absence of such a form signed by those persons this information shall be provided in accordance with Article 14 of Regulation (EU) [2016/679](#).”;

(31) in **Article 38, paragraph 3** is replaced by the following:

"3. If the request as provided for in paragraph 2 is made to a Member State other than the Member State responsible, the authorities of the Member State with which the request was lodged shall contact the authorities of the Member State responsible within a period of seven days. The Member State responsible shall check the accuracy of the data and the lawfulness of their processing in the VIS within a period of one month.";

(32) in **Article 43**, paragraphs 1 and 2 are replaced by the following:

"1. The European Data Protection Supervisor shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national supervisory authority finds major discrepancies between practices of Member States or finds potentially unlawful transfers using the communication channels of the interoperability components, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.

2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) XXXX/2018 [revised Regulation 45/2001].";

(33) in **Article 45**, the following paragraph 3 is added:

"3. The technical specifications for the quality, resolution and use of fingerprints and of the facial image for biometric verification and identification in the VIS shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).";

(34) the following **Article 45a** is inserted:

*"Article 45a  
Use of data for reporting and statistics*

1. The duly authorised staff of the competent authorities of Member States, the Commission, eu-LISA and the European Border and Coast Guard Agency established by Regulation (EU) 2016/1624 shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing for individual identification:

- (a) status information;
- (b) the competent authority, including its location;
- (c) sex, date of birth and current nationality of the applicant;
- (d) Member State of first entry, only as regards short stay visas;
- (e) date and place of the application and the decision concerning the application (issued or refused);
- (f) the type of document issued, i.e. whether ATV, uniform or LTV, long stay visa or residence permit;
- (g) the type of the travel document and the three letter code of the issuing country, only as regards short stay visas;

- (h) the grounds indicated for any decision concerning the document or the application, only as regards short stay visas; as regards long stay visas and residence permits, the decision concerning the application (whether to issue or to refuse the application and on which ground);
- (i) the competent authority, including its location, which refused the application and the date of the refusal, only as regards short stay visas;
- (j) the cases in which the same applicant applied for a short stay visa from more than one visa authority, indicating these visa authorities, their location and the dates of refusals, only as regards short stay visas;
- (k) As regards short stay visa, main purpose(s) of the journey; as regards long stay visas and residence permit, the purpose of the application;
- (l) the data entered in respect of any document withdrawn, annulled, revoked or whose validity is extended, as applicable;
- (m) where applicable, the expiry date of the long stay visa or residence permit;
- (n) the number of persons exempt from the requirement to give fingerprints pursuant to Article 13(7) of Regulation (EC) No 810/2009.
- (o) the cases in which the data referred to in point (6) of Article 9 could factually not be provided, in accordance with the second sentence of Article 8(5);
- (p) the cases in which the data referred to in point (6) of Article 9 was not required to be provided for legal reasons, in accordance with the second sentence of Article 8(5);
- (q) the cases in which a person who could factually not provide the data referred to in point (6) of Article 9 was refused a visa, in accordance with the second sentence of Article 8(5).

The duly authorised staff of the European Border and Coast Guard Agency shall have access to consult the data referred to in the first subparagraph for the purpose of carrying out risk analyses and vulnerability assessments as referred to in Articles 11 and 13 of Regulation (EU) 2016/1624.

2. For the purpose of paragraph 1 of this Article, eu-LISA shall store the data referred to in that paragraph in the central repository for reporting and statistics referred to in [Article 39 of the Regulation 2018/XX *[on interoperability]*]
3. The procedures put in place by eu-LISA to monitor the functioning of the VIS referred to in Article 50(1) shall include the possibility to produce regular statistics for ensuring that monitoring.
4. Every quarter, eu-LISA shall compile statistics based on the VIS data on short stay visas showing, for each location where a visa was lodged, in particular:
  - (a) total of airport transit visas applied for, including for multiple airport transit visas;



- (b) total of visas issued, including multiple A visas;
- (c) total of multiple visas issued;
- (d) total of visas not issued, including multiple A visas;
- (e) total of uniform visas applied for, including multiple-entry uniform visas;
- (f) total of visas issued, including multiple-entry visas;
- (g) total of multiple-entry visas issued, divided by length of validity (below 6 months, 1 year, 2 years, 3 years, 4 years, 5 years),
- (h) total of uniform visas not issued, including multiple-entry visas;
- (i) total of visas with limited territorial validity issued.

The daily statistics shall be stored in the central repository for reporting and statistics.

5. Every quarter, eu-LISA shall compile statistics based on the VIS data on long-stay visas and residence permits showing, for each location, in particular:
  - (a) total of long-stay visas applied for, issued, refused, extended and withdrawn;
  - (b) total of residence permits applied for, issued, refused, extended and withdrawn.
6. At the end of each year, statistical data shall be compiled in the form of quarterly statistics for that year. The statistics shall contain a breakdown of data for each Member State.
7. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of the common visa policy or of the migration policy, including on aspects pursuant to the application of Regulation (EU) No 1053/2013.";

(35) the following **Articles 45b, 45c, 45d and 45e** are inserted:

**"Article 45b**

*Access to data for verification by carriers*

1. In order to fulfil their obligation under point (b) of Article 26(1) of the Convention implementing the Schengen Agreement, air carriers, sea carriers and international carriers transporting groups overland by coach shall send a query to the VIS in order to verify whether or not third country nationals holding a short-stay visa, a long stay visa or a residence permit are in possession of a valid short stay visa, long stay visa or residence permit, as applicable. For this purpose, as regards short stay visas, carriers shall provide the data listed under points (a), (b) and (c) of Article 9(4) of this Regulation or under points (a), (b) and (c) of Article 22c, as applicable.
2. For the purpose of implementing paragraph 1 or for the purpose of resolving any potential dispute arising from its application, eu-LISA shall keep logs of all data processing operations carried out within the carrier gateway by carriers. Those logs

shall show the date and time of each operation, the data used for interrogation, the data transmitted by the carrier gateway and the name of the carrier in question.

Logs shall be stored for a period of two years. Logs shall be protected by appropriate measures against unauthorised access.

3. Secure access to the carrier gateway referred to in Article 1(2) (h) of Decision 2004/512/EC as amended by this Regulation shall allow carriers to proceed with the query consultation referred to in paragraph 1 prior to the boarding of a passenger. For this purpose, the carrier shall send the query to be permitted to consult the VIS using the data contained in the machine readable zone of the travel document.
4. The VIS shall respond by indicating whether or not the person has a valid visa, providing the carriers with an OK/NOT OK answer.
5. An authentication scheme, reserved exclusively for carriers, shall be set up in order to allow access to the carrier gateway for the purposes of paragraph 2 to the duly authorised members of the carriers' staff. The authentication scheme shall be adopted by the Commission by means of implementing acts in accordance with the examination procedure referred to in Article 49(2).

#### **Article 45c**

##### *Fall-back procedures in case of technical impossibility to access data by carriers*

1. Where it is technically impossible to proceed with the consultation query referred to in Article 45b(1), because of a failure of any part of the VIS or for other reasons beyond the carriers' control, the carriers shall be exempted of the obligation to verify the possession of a valid visa or travel document by using the carrier gateway. Where such failure is detected by the Management Authority, it shall notify the carriers. It shall also notify the carriers when the failure is remedied. Where such failure is detected by the carriers, they may notify the Management Authority.
2. The details of the fall-back procedures shall be laid down in an implementing act adopted in accordance with the examination procedure referred to in Article 49(2).

#### **Article 45d**

##### *Access to VIS data by European Border and Coast Guard teams*

1. To exercise the tasks and powers pursuant to Article 40(1) of Regulation (EU) 2016/1624 of the European Parliament and of the Council\* and in addition to the access provided for in Article 40(8) of that Regulation, the members of the European Border and Coast Guard teams, as well as teams of staff involved in return-related operations, shall, within their mandate, have the right to access and search data entered in VIS.
2. To ensure the access referred to in paragraph 1, the European Border and Coast Guard Agency shall designate a specialised unit with duly empowered European Border and Coast Guard officials as the central access point. The central access point shall verify that the conditions to request access to the VIS laid down in Article 45e are fulfilled.

\* Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

### Article 45e

#### *Conditions and procedure for access to VIS data by European Border and Coast Guard teams*

1. In view of the access referred to in paragraph 1 of Article 45d, a European Border and Coast Guard team may submit a request for the consultation of all data or a specific set of data stored in the VIS to the European Border and Coast Guard central access point referred to in Article 45d(2). The request shall refer to the operational plan on border checks, border surveillance and/or return of that Member State on which the request is based. Upon receipt of a request for access, the European Border and Coast Guard central access point shall verify whether the conditions for access referred to in paragraph 2 are fulfilled. If all conditions for access are fulfilled, the duly authorised staff of the central access point shall process the requests. The VIS data accessed shall be transmitted to the team in such a way as not to compromise the security of the data.

2. For the access to be granted, the following conditions shall apply:

a) the host Member State authorises the members of the team to consult VIS in order to fulfil the operational aims specified in the operational plan on border checks, border surveillance and return, and

b) the consultation of VIS is required for performing the specific tasks entrusted to the team by the host Member State.

3. In accordance with Article 40(3) of Regulation (EU) 2016/1624, members of the teams, as well as teams of staff involved in return-related tasks may only act in response to information obtained from the VIS under instructions from and, as a general rule, in the presence of border guards or staff involved in return-related tasks of the host Member State in which they are operating. The host Member State may authorise members of the teams to act on its behalf.

4. In case of doubt or if the verification of the identity of the visa holder, long stay visa holder or residence permit holder fails, the member of the European Border and Coast Guard team shall refer the person to a border guard of the host Member State.

5. Consultation of the VIS data by members of the teams shall take place as follows:

a) When exercising tasks related to border checks pursuant to Regulation (EU) 2016/399, the members of the teams shall have access to VIS data for verification at external border crossing points in accordance with Articles 18 or 22g of this Regulation respectively;

b) When verifying whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, the members of the teams shall have access to the VIS data for verification within the territory of third country nationals in accordance with Articles 19 or 22h of this Regulation respectively;

c) When identifying any person that may not or may no longer fulfil the conditions for the entry to, stay or residence on the territory of the Member States, the members of the teams shall have access to VIS data for identification in accordance with Article 20 of this Regulation.

6. Where such access and search reveal the existence of a hit in VIS, the host Member State shall be informed thereof.

7. Every log of data processing operations within the VIS by a member of the European Border and Coast Guard teams or teams of staff involved in return-related tasks shall be kept by the Management Authority in accordance with the provisions of Article 34.

8. Every instance of access and every search made by the European Border and Coast Guard Agency shall be logged in accordance with the provisions of Article 34 and every use made of data accessed by the European Border and Coast Guard Agency shall be registered.

9. Except where necessary to perform the tasks for the purposes of the Regulation establishing a European Travel Information and Authorisation System (ETIAS), no parts of VIS shall be connected to any computer system for data collection and processing operated by or at the European Border and Coast Guard Agency nor shall the data contained in VIS to which the European Border and Coast Guard Agency has access be transferred to such a system. No part of VIS shall be downloaded. The logging of access and searches shall not be construed as constituting to be the downloading or copying of VIS data.

10. Measures to ensure security of data as provided for in Articles 32 shall be adopted and applied by the European Border and Coast Guard Agency."

(36) **Article 49** is replaced by the following:

*"Article 49*

*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council\*.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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\* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).";

(37) the following **Article 49a** is inserted:

*"Article 49a*  
*Advisory group*

An Advisory Group shall be established by eu-LISA and provide it with the expertise related to the VIS in particular in the context of the preparation of its annual work programme and its annual activity report." ;

(38) **Article 50** is replaced by the following:

*"Article 50*

*Monitoring and evaluation*

1. The Management Authority shall ensure that procedures are in place to monitor the functioning of the VIS against objectives relating to output, cost-effectiveness, security and quality of service.
2. For the purposes of technical maintenance, the Management Authority shall have access to the necessary information relating to the processing operations performed in the VIS.
3. Every two years eu-LISA shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of VIS, including the security thereof.
4. While respecting the provisions of national law on the publication of sensitive information, each Member State and Europol shall prepare annual reports on the effectiveness of access to VIS data for law enforcement purposes containing information and statistics on:
  - (a) the exact purpose of the consultation including the type of terrorist or serious criminal offence;
  - (b) reasonable grounds given for the substantiated suspicion that the suspect, perpetrator or victim is covered by this Regulation;
  - (c) the number of requests for access to the VIS for law enforcement purposes;
  - (d) the number and type of cases which have ended in successful identifications.

Member States' and Europol's annual reports shall be transmitted to the Commission by 30 June of the subsequent year.

5. Every four years ,the Commission shall produce an overall evaluation of the VIS. This overall evaluation shall include an examination of results achieved against objectives and an assessment of the continuing validity of the underlying rationale, the application of this Regulation in respect of the VIS, the security of the VIS, the use made of the provisions referred to in Article 31 and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.
6. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraph 3, 4 and 5.
7. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.";

(39) The title of annex 1 is replaced by the following:

"List of international organisations referred to in Article 31(1)".

- (40) After Article 22, the following **chapters IIIa and IIIb** are inserted:

### **CHAPTER IIIa**

#### **ENTRY AND USE OF DATA ON LONG STAY VISAS AND RESIDENCE PERMITS**

##### *Article 22a*

##### **Procedures for entering data upon decision on an application for a long stay visa or residence permit**

1. Upon decision on an application for a long stay visa or residence permit, the authority that issued that decision shall create without delay the individual file, by entering the data referred to in Article 22c or Article 22d in the VIS.
2. Upon creation of the individual file, the VIS shall automatically launch the query pursuant to Article 22b.
3. If the holder has applied as part of a group or with a family member, the authority shall create an individual file for each person in the group and link the files of the persons having applied together and who were issued a long stay visa or residence permit.
4. Where particular data are not required to be provided in accordance with Union or national legislation or factually cannot be provided, the specific data field(s) shall be marked as 'not applicable'. In the case of fingerprints, the system shall permit a distinction to be made between the cases where fingerprints are not required to be provided in accordance with Union or national legislation and the cases where they cannot be provided factually.

##### *Article 22b*

##### **Queries to other systems**

1. Solely for the purpose of assessing whether the person could pose a threat to the public policy, or internal security or public health of the Member States, pursuant to Article 6(1)(e) of Regulation (EU) 2016/399, the files shall be automatically processed by the VIS to identify hit(s). The VIS shall examine each file individually.
2. Every time an individual file is created upon issuance or refusal pursuant to Article 22d of a long-stay visa or residence permit, the VIS shall launch a query by using the European Search Portal defined in Article 6(1) of [*the Interoperability Regulation*] to compare the relevant data referred to in Article 22c(2)(a), (b), (c), (f) and (g) of this Regulation with the relevant data, in the VIS, the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS) including the watchlist referred to in Article 29 of Regulation (EU) 2018/XX for the purposes of establishing a European Travel Information and Authorisation System, [the ECRIS-TCN system as far as convictions related to terrorist offences and other forms of serious criminal offences

are concerned], the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD), and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN).

3. The VIS shall add a reference to any hit obtained pursuant to paragraphs (2) and (5) to the individual file. Additionally, the VIS shall identify, where relevant, the Member State(s) that entered or supplied the data having triggered the hit(s) or Europol, and shall record this in the individual file.
4. For the purposes of Article 2(2)(f) in respect of an issued or extended long stay visa the queries carried out under 22b paragraph 2 of this Article shall compare the relevant data referred to in Article 22c(2), to the data present in the SIS in order to determine whether the holder is subject to one of the following alerts:
  - (a) an alert in respect of persons wanted for arrest for surrender purposes or extradition purposes;
  - (b) an alert in respect of missing persons;
  - (c) an alert in respect of persons sought to assist with a judicial procedure;
  - (d) an alert on persons and objects for discreet checks or specific checks.

Where the comparison referred to in this paragraph reports one or several hit(s), the VIS shall send an automated notification to the central authority of the Member State that launched the request and shall take any appropriate follow-up action.

5. As regards the consultation of EES, ETIAS and VIS data pursuant to paragraph 2, the hits shall be limited to indicating refusals of a travel authorisation, of entry or of a visa which are based on security grounds.
6. Where the long stay visa or residence permit is issued or extended by a consular authority of a Member State, Article 9a shall apply.
7. Where the residence permit is issued or extended or where a long stay visa is extended by an authority in the territory of a Member State, the following apply:
  - (a) that authority shall verify whether the data recorded in the individual file corresponds to the data present in the VIS, or one of the consulted EU information systems/databases, the Europol data, or the Interpol databases pursuant to paragraph 2;
  - (b) where the hit pursuant to paragraph 2 is related to Europol data, the Europol national unit shall be informed for follow up;
  - (c) where the data do not correspond, and no other hit has been reported during the automated processing pursuant to paragraphs 2 and 3, the authority shall delete the false hit from the application file;
  - (d) where the data correspond to or where doubts remain concerning the identity of the applicant, the authority shall take action on the data that triggered the hit

pursuant to paragraph 4 according to the procedures, conditions and criteria provided by EU and national legislation.

#### *Article 22c*

#### **Individual file to be created for a long stay visa or residence permit issued**

An individual file created pursuant to Article 22a(1) shall contain the following data:

- (1) the authority which issued the document, including its location;
- (2) the following data of the holder:
  - (a) surname (family name); first name(s); date of birth; current nationality or nationalities; sex; date, place and country of birth;
  - (b) type and number of the travel document and the three letter code of the issuing country of the travel document;
  - (c) the date of expiry of the validity of the travel document;
  - (cc) authority which issued the travel document;
  - (d) in the case of minors, surname and first name(s) of the holder's parental authority or legal guardian;
  - (e) the surname, first name and address of the natural person or the name and address of the employer or any other organisation on which the application was based;
  - (f) a facial image of the holder, where possible taken live;
  - (g) two fingerprints of the holder, in accordance with the relevant Union and national legislation;
- (3) the following data concerning the long stay visa or residence permit issued:
  - (a) status information indicating that a long-stay visa or residence permit has been issued;
  - (b) place and date of the decision to issue the long-stay visa or residence permit;
  - (c) the type of document issued (long-stay visa or residence permit);
  - (d) the number of the issued long-stay visa or residence permit;
  - (e) the expiry date of the long-stay visa or residence permit.

#### *Article 22d*

#### **Individual file to be created in certain cases of refusal of a long stay visa or residence permit**



Where a decision has been taken to refuse a long stay visa or a residence permit because the applicant is considered to pose a threat to public policy, internal security or to public health or the applicant has presented documents which were fraudulently acquired, or falsified, or tampered with, the authority which refused it shall create without delay an individual file with the following data:

- a. surname, surname at birth (former surname(s)); first name(s); sex; date, place and country of birth;
- b. current nationality and nationality at birth;
- c. type and number of the travel document, the authority which issued it and the date of issue and of expiry;
- d. in the case of minors, surname and first name(s) of the applicant's parental authority or legal guardian;
- e. the surname, first name and address of the natural person whom the application is based;
- f. a facial image of the applicant, where possible taken live;
- g. two fingerprints of the applicant, in accordance with the relevant Union and national legislation;
- h. information indicating that the long-stay visa or residence permit has been refused because the applicant is considered to pose a threat to public policy, public security or to public health, or because the applicant presented documents which were fraudulently acquired, or falsified, or tampered with;
- i. the authority that refused the long-stay visa or residence permit, including its location;
- j. place and date of the decision to refuse the long stay-visa or residence permit.

#### *Article 22e*

#### **Data to be added for a long stay visa or residence permit withdrawn**

1. Where a decision has been taken to withdraw a residence permit or long-stay visa or to shorten the validity period of a long stay visa, the authority that has taken the decision shall add the following data to the individual file:

- (a) status information indicating that the long-stay visa or residence permit has been withdrawn or, in the case of a long stay visa, that the validity period has been shortened;
- (b) authority that withdrew the long-stay visa or residence permit or shortened the validity period of the long stay visa, including its location;
- (c) place and date of the decision;

- (d) the new expiry date of the validity of the long stay visa, where appropriate;
- (e) the number of the visa sticker, if the reduced period takes the form of a new visa sticker.

2. The individual file shall also indicate the ground(s) for withdrawal of the long-stay visa or residence permit or shortening of the validity period of the long stay visa, in accordance with point (h) of Article 22d.

#### *Article 22f*

#### **Data to be added for a long stay visa or residence permit extended**

Where a decision has been taken to extend a residence permit or a long-stay visa, the authority which extended it shall add the following data to the individual file:

- (a) status information indicating that the long-stay visa or residence permit has been extended;
- (b) the authority that extended the long-stay visa or residence permit, including its location;
- (c) place and date of the decision;
- (d) in the case of a long stay visa, the number of the visa sticker, if the extension of the long-stay visa takes the form of a new visa sticker;
- (e) the expiry date of the extended period.

#### *Article 22g*

#### **Access to data for verification of long stay visas and residence permits at external border crossing points**

1. For the sole purpose of verifying the identity of the document holder and/or the authenticity and the validity of the long-stay visa or residence permit and whether the person is not considered to be a threat to public policy, internal security or public health of any of the Member States in accordance with Article 6(1)(e) of Regulation (EU) 2016/399, the competent authorities for carrying out checks at external border crossing points in accordance with that Regulation shall have access to search using the number of the document in combination with one or several of the data in Article 22c(2)(a), (b) and (c) of this Regulation.
2. If the search with the data listed in paragraph 1 indicates that data on the document holder are recorded in the VIS, the competent border control authority shall be given access to consult the following data of the individual file, solely for the purposes referred to in paragraph 1:
  - (a) the status information of the long-stay visa or residence permit indicating if it has been issued, withdrawn or extended;

- (b) data referred to in Article 22c(3)(c), (d), and (e);
- (c) where applicable, data referred to in Article 22e(1)(d) and (e);
- (d) where applicable, data referred to in Article 22f(d) and (e);
- (e) photographs as referred to in Article 22c(2)(f).

#### *Article 22h*

#### **Access to data for verification within the territory of the Member States**

1. For the sole purpose of verifying the identity of the holder and the authenticity and the validity of the long-stay visa or residence permit or whether the person is not a threat to public policy, internal security or public health of any of the Member States ,the authorities competent for carrying out checks within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled and, as applicable, police authorities, shall have access to search using the number of the long-stay visa or residence permit in combination with one or several of the data in Article 22c(2)(a), (b) and (c).
2. If the search with the data listed in paragraph 1 indicates that data on the holder are recorded in the VIS, the competent authority shall be given access to consult the following data of the individual file as well as, if applicable, of linked file(s) pursuant to Article 22a(4), solely for the purposes referred to in paragraph 1:
  - (a) the status information of the long-stay visa or residence permit indicating if it has been issued, withdrawn or extended;
  - (b) data referred to in Article 22c(3)(c), (d), and (e);
  - (c) where applicable, data referred to in Article 22e(1)(d) and (e);
  - (d) where applicable, data referred to in Article 22f(d) and (e);
  - (e) photographs as referred to in Article 22c(2)(f).

#### *Article 22i*

#### **Access to data for determining the responsibility for applications for international protection**

1. For the sole purpose of determining the Member State responsible for examining an application for international protection in accordance with Article 12 of Regulation (EU) No 604/2013, the competent asylum authorities shall have access to search with the fingerprints of the applicant for international protection.

Where the fingerprints of the applicant for international protection cannot be used or the search with the fingerprints fails, the search shall be carried out using the number of the long stay visa or residence permit in combination with the data in Article 22c(2)(a), (b) and (c).

2. If the search with the data listed in paragraph 1 indicates that a long-stay visa or residence permit is recorded in the VIS, the competent asylum authority shall be given access to consult the following data of the application file, and as regards the data listed in point (g) of linked application file(s) of the spouse and children, pursuant to Article 22a(4), for the sole purpose referred to in paragraph 1:
  - (a) the authority that issued or extended the long-stay visa or residence permit;
  - (b) the data referred to in Article 22c(2)(a) and (b);
  - (c) the type of document;
  - (d) the period of validity of the long-stay visa or residence permit;
  - (f) photographs as referred to in Article 22c(2)(f);
  - (g) the data referred to in Article 22c(2)(a) and (b) of the linked application file(s) on the spouse and children.
3. The consultation of the VIS pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 27 of Regulation (EU) No 603/2013 of the European Parliament and of the Council\*.

#### *Article 22j*

##### **Access to data for examining the application for international protection**

1. For the sole purpose of examining an application for international protection, the competent asylum authorities shall have access in accordance with Article 27 of Regulation (EU) No 603/2013 to search with the fingerprints of the applicant for international protection.

Where the fingerprints of the applicant for international protection cannot be used or the search with the fingerprints fails, the search shall be carried out using the number of the long stay visa or residence document in combination with the data in Article 22c(2)(a), (b) and (c), or a combination of data in Article 22d(a), (b), (c) and (f).
2. If the search with the data listed in paragraph 1 indicates that data on the applicant for international protection is recorded in the VIS, the competent asylum authority shall have access to consult, for the sole purpose referred to in paragraph 1, the data entered in respect of any long-stay visa or residence permit issued, refused, withdrawn or whose validity is extended, referred to in Articles 22c, 22d, 22e and 22f of the applicant and of the linked application file(s) of the applicant pursuant to Article 22a(3).
3. The consultation of the VIS pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 27 of Regulation (EU) No 603/2013.

## CHAPTER IIIb

### Procedure and conditions for access to the VIS for law enforcement purposes

#### *Article 22k*

##### *Member States' designated authorities*

1. Member States shall designate the authorities which are entitled to consult the data stored in the VIS in order to prevent, detect and investigate terrorist offences or other serious criminal offences.
2. Each Member State shall keep a list of the designated authorities. Each Member State shall notify eu-LISA and the Commission of its designated authorities and may at any time amend or replace its notification.
3. Each Member State shall designate a central access point which shall have access to the VIS. The central access point shall verify that the conditions to request access to the VIS laid down in Article 22n are fulfilled.

The designated authority and the central access point may be part of the same organisation if permitted under national law, but the central access point shall act fully independently of the designated authorities when performing its tasks under this Regulation. The central access point shall be separate from the designated authorities and shall not receive instructions from them as regards the outcome of the verification which it shall perform independently.

Member States may designate more than one central access point to reflect their organisational and administrative structure in the fulfilment of their constitutional or legal requirements.

4. Each Member State shall notify eu-LISA and the Commission of its central access point and may at any time amend or replace its notification.
5. At national level, each Member State shall keep a list of the operating units within the designated authorities that are authorised to request access to data stored in the VIS through the central access point(s).
6. Only duly empowered staff of the central access point(s) shall be authorised to access the VIS in accordance with Articles 22m and 22n.

#### *Article 22l*

##### *Europol*

1. Europol shall designate one of its operating units as 'Europol designated authority' and shall authorise it to request access to the VIS through the VIS designated central access point referred to in paragraph 2 in order to support and strengthen action by Member States in preventing, detecting and investigating terrorist offences or other serious criminal offences.

2. Europol shall designate a specialised unit with duly empowered Europol officials as the central access point. The central access point shall verify that the conditions to request access to the VIS laid down in Article 22p are fulfilled.

The central access point shall act independently when performing its tasks under this Regulation and shall not receive instructions from the Europol designated authority referred to in paragraph 1 as regards the outcome of the verification.

#### *Article 22m*

##### *Procedure for access to the VIS for law enforcement purposes*

1. The operating units referred to in Article 22k(5) shall submit a reasoned electronic or written request to the central access points referred to in Article 22k(3) for access to data stored in the VIS. Upon receipt of a request for access, the central access point(s) shall verify whether the conditions for access referred to in Article 22n are fulfilled. If the conditions for access are fulfilled, the central access point(s) shall process the requests. The VIS data accessed shall be transmitted to the operating units referred to in Article 22k(5) in such a way as to not compromise the security of the data.
2. In a case of exceptional urgency, where there is a need to prevent an imminent danger to the life of a person associated with a terrorist offence or another serious criminal offence, the central access point(s) shall process the request immediately and shall only verify ex post whether all the conditions of Article 22n are fulfilled, including whether a case of urgency actually existed. The ex post verification shall take place without undue delay and in any event no later than 7 working days after the processing of the request
3. Where an ex post verification determines that the access to VIS data was not justified, all the authorities that accessed such data shall erase the information accessed from the VIS and shall inform the central access points of the erasure.

#### *Article 22n*

##### *Conditions for access to VIS data by designated authorities of Member States*

1. Designated authorities may access the VIS for consultation if all of the following conditions are met:
  - (a) access for consultation is necessary and proportionate for the purpose of the prevention, detection or investigation of a terrorist offences or another serious criminal offence;
  - (b) access for consultation is necessary and proportionate in a specific case;
  - (c) reasonable grounds exist to consider that the consultation of the VIS data will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation;

- (d) where a query to the CIR was launched in accordance with Article 22 of Regulation 2018/XX [*on interoperability*], the reply received as referred to in paragraph 5 of [Article 22 of Regulation reveals that data is stored in the VIS."
2. The condition provided in point (d) of paragraph 1 does not need to be fulfilled for situations where the access to the VIS is needed as a tool to consult the visa history or the periods of authorised stay on the territory of the Member States of a known suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence.
3. Consultation of the VIS shall be limited to searching with any of the following data in the individual file:
- (a) surname(s) (family name), first name(s) (given names), date of birth, nationality or nationalities and/or sex;
  - (b) type and number of travel document or documents, three letter code of the issuing country and date of expiry of the validity of the travel document;
  - (c) visa sticker number or number of the long-stay visa or residence document and the date of expiry of the validity of the visa, long-stay visa or residence document, as applicable;
  - (d) fingerprints, including latent fingerprints;
  - (e) facial image.
4. Consultation of the VIS shall, in the event of a hit, give access to the data listed in this paragraph as well as to any other data taken from the individual file, including data entered in respect of any document issued, refused, annulled, revoked or extended. Access to the data referred to in point (4)(1) of Article 9 as recorded in the application file shall only be given if consultation of that data was explicitly requested in a reasoned request and approved by independent verification.

#### *Article 22o*

##### *Access to VIS for identification of persons in specific circumstances*

By derogation from Article 22n(1), designated authorities shall not be obliged to fulfil the conditions laid down in that paragraph to access the VIS for the purpose of identification of persons who had gone missing, abducted or identified as victims of trafficking in human beings and in respect of whom there are reasonable grounds to consider that consultation of VIS data will support their identification, and/or contribute in investigating specific cases of human trafficking. In such circumstances, the designated authorities may search in the VIS with the fingerprints of those persons.

Where the fingerprints of those persons cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in points (a) and (b) of Article 9.

Consultation of the VIS shall, in the event of a hit, give access to any of the data in Article 9, as well as to the data in Article 8(3) and (4).

*Article 22p*  
*Procedure and conditions for access to VIS data by Europol*

1. Europol shall have access to consult the VIS where all the following conditions are met:
  - (a) the consultation is necessary and proportionate to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling under Europol's mandate;
  - (b) the consultation is necessary and proportionate in a specific case;
  - (c) reasonable grounds exist to consider that the consultation of the VIS data will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation;
  - (d) where a query to the CIR was launched in accordance with Article 22 of Regulation 2018/XX [*on interoperability*], the reply received as referred to in Article 22(3) of that Regulation reveals that data is stored in the VIS.
2. The conditions laid down in Article 22n(2), (3) and (4) shall apply accordingly.
3. Europol's designated authority may submit a reasoned electronic request for the consultation of all data or a specific set of data stored in the VIS to the Europol central access point referred to in Article 22k(3). Upon receipt of a request for access the Europol central access point shall verify whether the conditions for access referred to in paragraphs 1 and 2 are fulfilled. If all conditions for access are fulfilled, the duly authorised staff of the central access point(s) shall process the requests. The VIS data accessed shall be transmitted to the operating units referred to in Article 22l(1) in such a way as not to compromise the security of the data.
4. The processing of information obtained by Europol from consultation with VIS data shall be subject to the authorisation of the Member State of origin. That authorisation shall be obtained via the Europol national unit of that Member State.

*Article 22q*  
*Logging and documentation*

1. Each Member State and Europol shall ensure that all data processing operations resulting from requests to access to VIS data in accordance with Chapter IIIc are logged or documented for the purposes of checking the admissibility of the request, monitoring the lawfulness of the data processing and data integrity and security, and self-monitoring.
2. The log or documentation shall show, in all cases:
  - (a) the exact purpose of the request for access to VIS data, including the terrorist offence or other serious criminal offence concerned and, for Europol, the exact purpose of the request for access;



- (b) the national file reference;
  - (c) the date and exact time of the request for access by the central access point to the VIS Central System;
  - (d) the name of the authority which requested access for consultation;
  - (e) where applicable, the decision taken with regard to the ex-post verification;
  - (f) the data used for consultation;
  - (g) in accordance with national rules or with Regulation (EU) 2016/794, the unique user identity of the official who carried out the search and of the official who ordered the search.
3. Logs and documentation shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs which do not contain personal data may be used for the monitoring and evaluation referred to in Article 50 of this Regulation. The supervisory authority established in accordance with Article 41(1) of Directive (EU) 2016/680, which is responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security, shall have access to these logs at its request for the purpose of fulfilling its duties.

#### *Article 22r*

##### *Conditions for access to VIS data by designated authorities of a Member State in respect of which this Regulation has not yet been put into effect*

1. Access to the VIS for consultation by designated authorities of a Member State in respect of which this Regulation has not yet been put into effect shall take place where the following conditions are met:
- (a) the access is within the scope of their powers;
  - (b) the access is subject to the same conditions as referred to in Article 22n(1);
  - (c) the access is preceded by a duly reasoned written or electronic request to a designated authority of a Member State to which this Regulation applies; that authority shall then request the national central access point(s) to consult the VIS.
2. A Member State in respect of which this Regulation has not yet been put into effect shall make its visa information available to Member States to which this Regulation applies, on the basis of a duly reasoned written or electronic request, subject to compliance with the conditions laid down in Article 22n(1).

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\* Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria

and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).”.

*Article 2*  
*Amendments to Decision 2004/512/EC*

Article 1(2) of **Decision 2004/512/EC** is replaced by the following:

"2. The Visa Information System shall be based on a centralised architecture and consist of:

(a) *the common identity repository as referred to in [Article 17(2)(a) of Regulation 2018/XX on interoperability],*

(b) a central information system, hereinafter referred to as ‘the Central Visa Information System’ (VIS),

(c) an interface in each Member State, hereinafter referred to as ‘the National Interface’ (NI-VIS) which shall provide the connection to the relevant central national authority of the respective Member State, or a National Uniform Interface (NUI) in each Member State based on common technical specifications and identical for all Member States enabling the Central System to connect to the national infrastructures in Member States,

(d) a communication infrastructure between the VIS and the National Interfaces;

(e) *a Secure Communication Channel between the VIS and the EES Central System;*

(f) *a secure communication infrastructure between the VIS Central System and the central infrastructures of the European search portal established by [Article 6 of Regulation 2017/XX on interoperability], shared biometric matching service established by [Article 12 of Regulation 2017/XX on interoperability], the common identity repository established by [Article 17 of Regulation 2017/XX on interoperability] and the multiple-identity detector (MID) established by [Article 25 of Regulation 2017/XX on interoperability];*

(g) *a mechanism of consultation on applications and exchange of information between central visa authorities ('VISMai');*

(h) *a carrier gateway;*

(i) *a secure web service enabling communication between the VIS, on the one hand and the the carrier gateway, and the international systems (Interpol systems/databases), on the other hand;*

(j) *a repository of data for the purposes of reporting and statistics.*

*The Central System, the National Uniform Interfaces, the web service, the carrier gateway and the Communication Infrastructure of the VIS shall share and re-use as much as technically possible the hardware and software components of respectively the EES Central System, the EES National Uniform Interfaces, the ETIAS carrier gateway, the EES web service and the EES Communication Infrastructure).*".

*Article 3*  
*Amendments to Regulation (EU) No 810/2009*

Regulation (EU) No 810/2009 is amended as follows:

(1) in **Article 10(3)**, point (c) is replaced by the following:

"(c) present a photograph in accordance with the standards set out in Regulation (EC) No 1683/95 or, upon a first application and subsequently at least every 59 months following that, in accordance with the standards set out in Article 13 of this Regulation.";

(2) **Article 13** is amended as follows:

(a) in paragraph 2, the first indent is replaced by the following:

"- a photograph taken live and collected digitally at the time of the application;"

(b) in paragraph 3, the first subparagraph is replaced by the following:

"Where fingerprints *and a live photograph of sufficient quality were* collected from the applicant and entered in the VIS as part of an application lodged less than 59 months before the date of the new application, these [data] *may be* copied to the subsequent application.";

(c) in paragraph 7, point (a) is replaced by the following:

"(a) children under the age of 6;"

(d) paragraph 8 is deleted;

(3) **Article 21** is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. In respect of each application the VIS shall be consulted in accordance with Articles 8(2), 15 and 9a of the Regulation (EC) No 767/2008. Member States shall ensure that full use is made of all search criteria pursuant to these articles, in order to avoid false rejections and identifications.

(b) the following paragraphs 3a and 3b are inserted:

"3a. For the purpose of assessing the entry conditions provided for in paragraph 3, the consulate shall take into account the result of the verifications pursuant to Article 9c of the Regulation (EC) No 767/2008 of the following databases:

(a) SIS and the SLTD to check whether the travel document used for the application corresponds to a travel document reported lost, stolen or invalidated in the and whether the travel document used for the application corresponds to a travel document recorded in a file in the Interpol TDAWN;

- (b) the ETIAS Central System to check whether the applicant correspond to a refused, revoked or annulled application for travel authorisation;
- (c) the VIS to check whether the data provided in the application concerning the travel document correspond to another application for a visa associated with different identity data, as well as whether the applicant has been subject to a decision to refuse, revoke or annul a short stay visa;
- (d) the EES to check whether the applicant is currently reported as overstayer, whether he has been reported as overstayer in the past or whether the applicant was refused entry in the past;
- (e) the Eurodac to check whether the applicant was subject to a withdrawal or rejection of the application for international protection;
- (f) the Europol data to check whether the data provided in the application corresponds to data recorded in this database;
- (g) the ECRIS-TCN system to check whether the applicant corresponds to a person whose data is recorded in this database for terrorist offences or other serious criminal offences;
- (h) the SIS to check whether the applicant is subject to an alert in respect of persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant or wanted for arrest for extradition purposes.

The consulate shall have access to the application file and the linked application file(s), if any, as well as to all the results of the verifications pursuant to Article 9c of Regulation (EC) No 767/2008.

3b. The visa authority shall consult the multiple-identity detector together with the common identity repository referred to in Article 4(37) of Regulation 2018/XX [*on interoperability*] or the SIS or both to assess the differences in the linked identities and shall carry out any additional verification necessary to take a decision on the status and colour of the link as well as to take a decision on the issuance or refusal of the visa of the person concerned.

In accordance with Article 59(1) of Regulation 2018/XX [*on interoperability*], this paragraph shall apply only as from the start of operations of the multiple-identity detector.”;

(c) paragraph 4 is replaced by the following:

“4. The consulate shall verify, using the information obtained from the EES, *whether the applicant will not exceed with the intended stay* the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a national long-stay visa or a residence permit issued by another Member State.”;

(4) the following **Article 21a** is inserted:

“*Article 21a*

### **Specific risk indicators**

1. Assessment of security or illegal immigration or a high epidemic risks shall be based on:

- (a) statistics generated by the EES indicating abnormal rates of overstayers and refusals of entry for a specific group of travellers holding a visa;
  - (b) statistics generated by the VIS in accordance with Article 45a indicating abnormal rates of refusals of visa applications due to an irregular migration, security or public health risk associated with a specific group of travellers;
  - (c) statistics generated by the VIS in accordance with Article 45a and the EES indicating correlations between information collected through the application form and overstay or refusals of entry;
  - (d) information substantiated by factual and evidence-based elements provided by Member States concerning specific security risk indicators or threats identified by that Member State;
  - (e) information substantiated by factual and evidence-based elements provided by Member States concerning abnormal rates of overstayers and refusals of entry for a specific group of travellers for that Member State;
  - (f) information concerning specific high epidemic risks provided by Member States as well as epidemiological surveillance information and risk assessments provided by the European Centre for Disease Prevention and Control (ECDC) and disease outbreaks reported by the World Health Organisation (WHO).
2. The Commission shall adopt an implementing act specifying the risks referred to in paragraph 1. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 52(2).
3. Based on the specific risks determined in accordance with paragraph 2 specific risk indicators shall be established, consisting of a combination of data including one or several of the following:
  - (a) age range, sex, nationality;
  - (b) country and city of residence;
  - (c) Member State(s) of destination;
  - (d) Member State of first entry;
  - (e) purpose of travel;
  - (f) current occupation.
4. The specific risk indicators shall be targeted and proportionate. They shall in no circumstances be based solely on a person's sex or age. They shall in no circumstances be based on information revealing a person's race, colour, ethnic or social origin, genetic features, language, political or any other opinions, religion or philosophical belief, trade union membership, membership of a national minority, property, birth, disability or sexual orientation.

5. The specific risk indicators shall be adopted by the Commission by implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 52(2).
  6. The specific risk indicators shall be used by the visa authorities when assessing whether the applicant presents a risk of illegal immigration, a risk to the security of the Member States, or a high epidemic risk in accordance to Article 21(1).
  7. The specific risks and the specific risk indicators shall be regularly reviewed by the Commission.";
- (5) **Article 46** is replaced by the following:

*" Article 46  
Compilation of statistics*

The Commission shall, by 1 March each year, publish the compilation of the following annual statistics on visas per consulate and border crossing point where individual Member States process visa applications:

- (a) number of airport transit visas applied for, issued and refused;
- (b) number of uniform single entry, and multiple entry visa applied for, issued (disaggregated by length of validity: 1, 2, 3, 4 and 5 years) and refused;
- (c) number of visas with limited territorial validity issued.

These statistics shall be compiled on the basis of the reports generated by the central repository of data of the VIS in accordance with Article 17 of Regulation (EC) No 767/2008.";

- (6) In **Article 57**, paragraphs 3 and 4 are deleted.

*Article 4  
Amendments to Regulation (EU) No 2017/2226*

Regulation (EU) No 2017/2226 is amended as follows:

- (1) in **Article 9(2)**, the following sub-paragraph is added:

"The EES shall provide the functionality for the centralised management of this list. The detailed rules on managing this functionality shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 68(2) of this Regulation.";

- (2) in **Article 13**, paragraph 3 is replaced by the following:

"3. In order to fulfil their obligation under point (b) of Article 26(1) of the Convention implementing the Schengen Agreement, carriers shall use the web service to verify whether a short-stay visa is valid, including if the number of authorised entries have already been used or if the holder has reached the maximum duration of the authorised stay or, as the case may

be, if the visa is valid for the territory of the port of destination of that travel. Carriers shall provide the data listed under points (a), (b) and (c) of Article 16(1) of this Regulation. On that basis, the web service shall provide carriers with an OK/NOT OK answer. Carriers may store the information sent and the answer received in accordance with the applicable law. Carriers shall establish an authentication scheme to ensure that only authorised staff may access the web service. It shall not be possible to regard the OK/NOT OK answer as a decision to authorise or refuse entry in accordance with Regulation (EU) 2016/399.";

(3) in Article 35(4), the expression "through the infrastructure of the VIS" is deleted.

*Article 5*  
*Amendments to Regulation (EU) 2016/399*

Regulation (EU) 2016/399 is amended as follows:

(1) in **Article 8(3)**, the following point (ba) is added:

“(ba) if the third-country national holds a long stay visa or a residence permit, the thorough checks on entry shall also comprise verification of the identity of the holder of the long-stay visa or residence permit and the authenticity of the long-stay visa or residence permit by consulting the Visa Information System (VIS) in accordance with Article 22g of Regulation (EC) No 767/2008;

in circumstances where verification of the document holder or of the document in accordance with Articles 22g of that Regulation, as applicable, fails or where there are doubts as to the identity of the holder, the authenticity of the document and/or the travel document, the duly authorised staff of those competent authorities shall proceed to a verification of the document chip.”;

(2) in Article 8(3), points (c) to (f) are deleted.

*Article 7*  
*Amendments to Regulation (EU) XXX on establishing a framework for interoperability between EU information systems (borders and visa) [interoperability Regulation]*

Regulation (EU) XXX on establishing a framework for interoperability between EU information systems (borders and visa) [interoperability Regulation] is amended as follows:

(1) in **Article 13(1), point (b)** is replaced by the following:

"(b) the data referred to in Article 9(6), Article 22c(2)(f) and (g) and Article 22d(f) and (g) of Regulation (EC) No 767/2008;"

(2) In **Article 18(1), point (b)** is replaced by the following:

"(b) the data referred to in Article 9(4)(a), (b) and (c), Article 9 (5) and (6), Article 22c(2)(a) to (cc), (f) and (g), Article 22d(a), (b), (c), (f) and (g) of Regulation (EC) No 767/2008;"

(3) in **Article 26(1), point (b)** is replaced by the following:

"(b) competent authorities referred to in Article 6(1) and (2) of Regulation (EC) No 767/2008 when creating or updating an application file or an individual file in the VIS in accordance with Article 8 or Article 22a of Regulation (EC) No 767/2008;"

(4) **Article 27** is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

"(b) an application file or an individual file is created or updated in the VIS in accordance with Article 8, or Article 22a of Regulation (EC) No 767/2008;"

(b) in paragraph 3, point (b) is replaced by the following:

"(b) surname (family name); first name(s) (given name(s)); date of birth, sex and nationality(ies) as referred to in Article 9(4)(a), in Article 22c(2)(a) and in Article 22d(a) of Regulation (EC) No 767/2008;"

(4) in **Article 29(1), point (b)** is replaced by the following:

"(b) the competent authorities referred to in Article 6(1) and (2) of Regulation (EC) No 767/2008 for hits that occurred when creating or updating an application file or an individual file in the VIS in accordance with Article 8 or Article 22a of Regulation (EC) No 767/2008;"

#### *Article 8*

#### *Repeal of Decision 2008/633/JHA*

Decision 2008/633/JHA is repealed. References to Decision 2008/633 shall be construed as references to Regulation (EC) No 767/2008 and shall be read in accordance with the correlation table in Annex 2“.

#### *Article 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*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*



## LEGISLATIVE FINANCIAL STATEMENT

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

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## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) and Regulation 810/2009 establishing a Community Code on Visas (Visa Code)

#### 1.2. Policy area(s) concerned

Area of Home Affairs

#### 1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>75</sup>
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Grounds for the proposal/initiative

##### 1.4.1. Requirement(s) to be met in the short or long term

- 1) Contribute to assisting in the identification and return of third country nationals that do not, or no longer fulfil the conditions for entry to, or stay on the territory of the Member States in accordance with the Return Directive;
- 2) Improve efficiency of the VIS for the purposes of facilitating return procedures;
- 3) Better meeting the VIS objectives (facilitation of the fight against fraud, facilitation of checks at external border crossing points, facilitate the application of the Dublin II Regulation);
- 4) Support with the prevention and fight against child trafficking, and with the identification/verification of identity of TCN children;
- 5) Facilitate and strengthen checks at external border crossing points within the territory of the Member States;

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<sup>75</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

- 6) Enhance the internal security of the Schengen Area by facilitating the exchange of information among MS on TCNs holders, or applying for long stay and residence documents;
- 7) Contribute to the prevention detection and investigation of terrorist offences or of the serious criminal offences;
- 8) Gather statistics to support evidence-based European Union migration policy making;
- 9) Implement the same procedural search standard as other constitutive system-elements of the visa policy, thus lowering the burden for Member States and contributing to the objective of a common visa policy.

1.4.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

The objectives of the revised VIS Regulation, to set up a common system and common procedures for the exchange of visa data between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at EU level. The further improvement of these common procedures and rules on the exchange of data consequently requires EU action.

The identified problems are unlikely to disappear in the near future and they are directly related to the current provisions of the VIS. Amendments of the VIS legal framework and related legislation are only possible at EU level. By reason of the scale, effects and impact of the envisaged actions, the fundamental objectives can only be achieved efficiently and systematically at EU level. As regards in particular the copy of the travel document and fingerprinting of minors, the subsequent analysis of the option will further demonstrate how non-EU action cannot sufficiently address the problem, as they require a solution through a centralised storage and access to data that none of the MS taken individually can achieve. As regards in particular the problem of long-stay visas and residence documents, more than 90% of the Member States consulted considered necessary an EU legislative response to address the information gap. As regards migration and security checks, it relies by its nature on an immediate access to all other MS information, which can only be achieved through EU action.

The initiative will further develop and improve the rules in the VIS, which implies the highest degree of harmonised rules that cannot be solved by Member States acting alone and can only be addressed at EU level.

Expected generated EU added value (ex-post)

The VIS is the main database comprising data of visa required TCN in Europe. Hence, the VIS is indispensable when it comes to supporting external border controls and checks on irregular migrants found on the national territory. The objectives of this proposal pertain to technical improvements to enhance the efficiency and effectiveness of the system and to harmonise its use across participating Member States. The transnational nature of these aims, along with the challenges in ensuring effective information exchange to counter ever-diversifying threats, mean that the EU is in the best position to propose solutions to these problems. The objectives of enhancing the efficiency and harmonised use of the VIS, namely, the increase in the volume, the quality and the speed of the information exchange via a centralised large-scale information system managed by a regulatory agency (eu-LISA) cannot be achieved by Member States alone and require intervention at the EU level. If the present issues are not addressed, the VIS will continue to operate in line with the rules applicable at present, thereby missing opportunities for maximising efficiency and EU added value identified through the VIS evaluation and its use by Member States.

Regarding taking fingerprints for visa applicants under 12, the Member States cannot unilaterally decide on changing the system because the VIS Regulation is already stipulating a number of rules.

National action is possible, and desirable, to try to obtain better cooperation of third countries on matters of return of irregular migrants. Nevertheless, it is unlikely that any such activities will achieve the same effect as making the travel document available in VIS for duly justified purposes.

Regarding long-stay visas and residence permits, it is unlikely that national action would address the problem; Member States could act on an individual basis, by strengthening their documents, their issuance process, document checks at border-crossing points or by reinforcing or systematising bilateral cooperation. However, this approach would not address the identified information gap in a comprehensive manner as further described in the Impact Assessment.

Regarding automated checks of other databases, Member States are free to develop solutions to consult both their national, as well as EU and international databases. However, harmonising those rules at EU level is preferable in order to enable Member States to apply the common Schengen rules in a coordinated way.

#### *1.4.3. Lessons learned from similar experiences in the past*

The main lessons learned from the development of the second generation Schengen Information System and of the Visa Information System were:

1. The development phase should commence only after the technical and operational requirements are fully defined. VIS will not be updated unless the underlying legal instruments, setting out its purpose, scope, functions and technical details have been definitively adopted.
2. The Commission conducted (and continues to conduct) continuous consultations with the relevant stakeholders, including delegates to the SISVIS Committee under the Comitology procedure and the Return Directive Contact Group. The changes

proposed by this Regulation were discussed in a transparent and comprehensive way in dedicated meetings and workshops. Furthermore, internally, the Commission set up an Inter-service Steering Group encompassing the Secretariat-General and the Directorates-General for Migration and Home Affairs and Justice. This steering group monitored the evaluation process and provided guidance as needed. In addition, the Commission conducted open public consultations concerning the examined policy aspects.

3. The Commission also sought external expertise; the findings have been incorporated in the developments of this proposal:

- An external study on Feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicants' travel document in the Visa Information System (Ecorys) covering two policy/problem areas was conducted.

- The Commission also launched an external study on Integrated Border Management – Feasibility Study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits (PwC) which was delivered in September 2017.

#### 1.4.4. *Compatibility and possible synergy with other appropriate instruments*

In line with the April 2016 Communication on Stronger and Smarter Information Systems for Borders and Security, the Commission proposed additional information systems in the area of border management. The Entry/Exit System (EES) Regulation<sup>76</sup> will register entry, exit and refusal of entry information of third country nationals crossing the external borders of the Schengen area, thus identifying overstayers. The EES Regulation also amends the VIS Regulation and stipulates rules on interoperability between EES and VIS, establishing a direct communication channel between the two systems for the use of border and visa authorities. This will allow border authorities to verify the validity of the visa and the identity of a visa holder directly against the VIS at the external borders. Consular authorities will be able to consult the EES file of an applicant to verify the use made of previous visas.

The Commission also presented a proposal for a European Travel Information and Authorisation System (ETIAS)<sup>77</sup> aiming at a more efficient management of the EU's external borders, and improved internal security by introducing advance checks on all visa-free travellers before their arrival at the external borders.

In December 2017, the Commission presented a proposal to ensure interoperability between EU information systems for security, border and migration management. The proposal also seek to facilitate and streamline access by law enforcement

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<sup>76</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011.

<sup>77</sup> COM(2016)731 of 16.11.2016.

authorities to non-law enforcement information systems at EU level including the VIS, where necessary for the prevention, investigation, detection or prosecution of serious crime and terrorism. However, ensuring various information systems are interoperable is only the first step. In order to make use of interoperability, concrete measures need to be taken to make interoperable IT systems work together.

In addition to these legislative developments, in September 2017, the Commission Communication on the Delivery of the European Agenda on Migration<sup>78</sup> acknowledged the need to further adapt the common visa policy to current challenges, taking into account new IT solutions and balancing the benefits of facilitated visa and visa-free travel with improved migration, security and border management, and making full use of interoperability. In this context, the Commission presented a Communication on adapting the common visa policy to new challenges on 14 March 2018<sup>79</sup>, in parallel with a proposal to amend the Visa Code. The proposal to amend the Visa Code<sup>80</sup> aims to simplify and strengthen the visa application procedure, to make it easier for tourists and business travellers to come to Europe with a visa while strengthening the prevention of security and irregular migration risks, most notably by linking visa policy with the return policy. The VIS fits into this context as the electronic processing tool supporting the visa procedure.

The March Communication also announced the work towards enhancing security by revising the VIS and making full use of interoperability. It furthermore announced the three main modalities in which enhanced security would be achieved: 1. by enhancing checks in visa processing using interoperability; 2. by closing remaining information gaps for borders and security through the inclusion of long-stay visas and residence documents in the VIS and 3. by addressing remaining information gaps in short-stay visa processing, in respect of fingerprinting age of applicants and keeping copies of travel documents.

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<sup>78</sup> [COM\(2017\)558 final](#).

<sup>79</sup> COM(2018)251.

<sup>80</sup> COM(2018)252.

## 1.5. Duration and financial impact

Proposal/initiative of **limited duration**

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from 2021 to 2023,
- followed by full-scale operation.

## 1.6. Management mode(s) planned<sup>81</sup>

**Direct management** by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 208 and 209 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

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<sup>81</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

Comments



## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

The rules on monitoring and evaluation are described in Article 50 of the VIS Regulation:

1. The Management Authority shall ensure that procedures are in place to monitor the functioning of the VIS against objectives relating to output, cost-effectiveness, security and quality of service.
2. For the purposes of technical maintenance, the Management Authority shall have access to the necessary information relating to the processing operations performed in the VIS.
3. Two years after the VIS is brought into operation and every two years thereafter, the Management Authority shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of the VIS, including the security thereof.
4. Three years after the VIS is brought into operation and every four years thereafter, the Commission shall produce an overall evaluation of the VIS. This overall evaluation shall include an examination of results achieved against objectives and an assessment of the continuing validity of the underlying rationale, the application of this Regulation in respect of the VIS, the security of the VIS, the use made of the provisions referred to in Article 31 and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.
5. Before the end of the periods referred to in Article 18(2) the Commission shall report on the technical progress made regarding the use of fingerprints at external borders and its implications for the duration of searches using the number of the visa sticker in combination with verification of the fingerprints of the visa holder, including whether the expected duration of such a search entails excessive waiting time at border crossing points. The Commission shall transmit the evaluation to the European Parliament and the Council. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose, if necessary, appropriate amendments to this Regulation.
6. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraph 3, 4 and 5.
7. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 4.
8. During the transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for producing and submitting the reports referred to in paragraph 3.

## 2.2. Management and control system

### 2.2.1. Risk(s) identified

#### 1. Difficulties with the technical development of the system

Adjustments the VIS may require additional changes to interfaces towards stakeholders. Member States have technically different national IT systems. Furthermore, border control processes may differ according to the local circumstances. Additionally, the integration of the National Uniform Interfaces (NUIs) needs to be fully aligned with central requirements.

There is a remaining risk that technical and legal aspects of the VIS may be implemented in different ways by different Member States, due to insufficient coordination between the central and national sides. The NUI concept envisaged should mitigate this risk.

#### 2. Difficulties with the timely development

From the experience gained during the development of the VIS and the SIS II, it can be anticipated that a crucial factor for a successful adjustment of the VIS will be the timely development of the system by an external contractor. As a centre of excellence in the field of development and management of large-scale IT systems, eu-LISA will also be responsible for the award and management of contracts.

#### 3. Difficulties for the Member States:

The national systems have to be aligned with central requirements and discussions with Member States on this may introduce delays in the development. This risk could be mitigated through early engagement with Member States on this issue to ensure action can be taken at the appropriate time.

### 2.2.2. Information concerning the internal control system set up

The responsibilities for the central components of the VIS are exercised by eu-LISA. In order to enable better monitoring of the use of the VIS to analyse trends concerning migratory pressure, border management and criminal offences, the Agency should be able to develop a state-of-the-art capability for statistical reporting to the Member States and the Commission.

eu-LISA's accounts will be submitted for the approval of the Court of Auditors and subject to the discharge procedure. The Commission's Internal Audit Service will carry out audits in cooperation with the Agency's internal auditor.

### 2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

N/A

## 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures.*

The measures foreseen to combat fraud are laid down in Article 35 of Regulation (EU) 1077/2011 which provides as follows:

1. In order to combat fraud, corruption and other unlawful activities, Regulation (EC) No 1073/1999 shall apply.

2. The Agency shall accede to the Interinstitutional Agreement concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.

3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.

In accordance with this provision, the decision of the Management Board of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interests was adopted on 28 June 2012.

DG HOME's fraud prevention and detection strategy will apply.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading..... ]	Diff./Non-diff. <sup>82</sup>	from EFTA countries <sup>83</sup>	from candidate countries <sup>84</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [3] [Heading Security and Citizenship]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
3	Border Management Fund line under the 2021-2027 MFF	Diff.	NO	NO	YES	NO
3	Heading 5 Security and Defence, cluster 12 Security - Europol	Diff	NO	NO	NO	NO
3	Heading 4 (cluster 11 Border Management) – European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) under 2021-2027 MFF	Diff	NO	NO	YES	NO
3	Heading 4 (cluster 11 Border Management) – European Border and Coast Guard Agency (Frontex) under the 2021-2027 MFF	Diff	NO	NO	YES	NO

<sup>82</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>83</sup> EFTA: European Free Trade Association.

<sup>84</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework		3	Security and Citizenship									
DG HOME	Year	2021	2022	2023	2024	2025	2026	2027	TOTAL			
Border Management Fund line (18.0201XX) in 2014-2020 MFF	Commitments	18,000	13,500	13,500	0,000	0,000	0,000	0,000	45,000			
	Payments	9,000	11,250	13,275	7,088	3,375	1,013	0,000	45,000			
<b>TOTAL appropriations for DG HOME</b>	Commitments	18,000	13,500	13,500	0,000	0,000	0,000	0,000	45,000			
	Payments	9,000	11,250	13,275	7,088	3,375	1,013	0,000	45,000			

These expenses will cover cost related to:

- Contributions to Member States covering development and implementation of specific measures at national level to connect migration authorities issuing residence permits in the territory to the VIS, to develop the national functionality for carrying out automated queries against other databases, and to implement the measure of fingerprinting applicants as of the age of 6, to store copies of the travel documents, to prepare the national interfaces for the central VIS Repository on reporting and statistics and to implement measures on data quality.
- The contributions for Member States are estimated on the basis of past ISF spending of Member States to implement various strands of the VIS. A ballpark amount of approximately 700,000 euro/Member State to increase the capacity of their national interface to exchange long stay visa and residence permit data, in addition to the current volume of short stay visa data (22M applications expected as compared to current 52M VIS capacity on short stay visas – in comparison, one average MS spends on average 800,000 euro/year for recurrent VIS business).

Former 18.02.XX – European Agency for law enforcement cooperation (Europol)	Year	2021	2022	2023	2024	2025	2026	2027	TOTAL
Staff expenditure	Commitments			<b>0,148</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>1,628</b>
	Payments			<b>0,148</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>1,628</b>
Operational expenditure	Commitments	<b>7,000</b>	<b>7,000</b>	<b>6,000</b>	<b>2,000</b>	<b>2,000</b>	<b>2,000</b>	<b>2,000</b>	<b>28,000</b>
	Payments	<b>7,000</b>	<b>7,000</b>	<b>6,000</b>	<b>2,000</b>	<b>2,000</b>	<b>2,000</b>	<b>2,000</b>	<b>28,000</b>
<b>TOTAL appropriations for Europol</b>	Commitments	7,000	7,000	6,148	2,370	2,370	2,370	2,370	<b>29,628</b>
	Payments	7,000	7,000	6,148	2,370	2,370	2,370	2,370	<b>29,628</b>

These expenses will cover cost related to:

- Development of an AFIS necessary to enable the fingerprints/facial-images to be searched against Europol biometric data. The AFIS should allow the same response time as VIS (~10 minutes) to avoid delays in the processing of visa applications. The cost of building an AFIS was estimated on the basis of similar experience with building VIS/AFIS by eu-LISA, which cost 30M (2006 figures) when first implemented and 10M more for increased volume of data. Europol data represents about 1/3 of VIS capacity, so 13M. Updated prices of the market (systems have become more expensive due to increased demand and decreased competition) should be taken into account, as well as size increase of the Europol system by 2021 when the AFIS will start being built and the administrative costs related to it.
- Staff is necessary to ensure the manual verification of data when hits are obtained against Europol data (fingerprint specialists). There is currently no such function within Europol (because the system of automated checks is put in place by the current proposal), so this needs to be foreseen. The number of fingerprint experts has been calculated on the basis of estimated workload for an expected 0,1% hits against Europol biometrics data of 16M applicants a year, hence 16,000 cases of verification/year, approx. 44 cases/day, a fingerprint expert doing approximately

8 cases/day, hence 4 persons would be needed. We propose 5 experts, to take into account the need to ensure presence 7 days/week, 24 hours/day (as the VIS works around the clock and the consulates around the globe may be sending applications at any time of the day).

Former 18.02.XX – European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) in the 2014-2020 MFF	Year	2021	2022	2023	2024	2025	2026	2027	TOTAL
Staff expenditure	Commitments	0,942	1,376	1,302	0,651	0,286	0,286	0,286	5,129
	Payments	0,942	1,376	1,302	0,651	0,286	0,286	0,286	5,129
Operational expenditure	Commitments	16,244	28,928	28,343	6,467	6,510	6,562	6,624	99,678
	Payments	16,244	28,928	28,343	6,467	6,510	6,562	6,624	99,678
<b>TOTAL appropriations</b>	Commitments	17,186	30,304	29,645	7,118	6,796	6,848	6,910	104,807
<b>for eu-LISA</b>	Payments	17,186	30,304	29,645	7,118	6,796	6,848	6,910	104,807

These expenses will cover cost related to:

- Development of all IT strands of the proposal, i.e. adjusting the existing system to include copies of travel documents, expanding its capacity to store larger volume of fingerprinting data, enabling system to store long-term visas and residence documents, developing software allowing for automated checks against other databases, developing a central functionality for data quality, developing the support for facial image recognition, for searching with latent fingerprints, integrating the VISMail functionality in the VIS, developing the central VIS Repository for reporting and statistics, and upgrading the capacity of the central VIS for monitoring of service health and availability (implementation of the active-active system for VIS). The calculations for each strand of the operations expenditures have been made on the basis of the cost estimates provided in the three studies supporting the impact assessment of this measure ("VIS developments" by eu-LISA; Ecorys' study on lowering the fingerprinting age for children and storing a copy of the passports in the central VIS, and PwC' study on a central Repository on long stay data).

- temporary staff needs to be hired for the development period, and 2 persons should be maintained after that, as the management of the system entails an increased workload once the VIS is expanded to new data (long stay documents and their holders), new access (ECBGA), and new functionality, hence more need for monitoring, maintenance, security of the system.

- Operation of the updated VIS.

Former 18.02.XX – European Border and Coast Guard Agency (Frontex) in the 2014–2020 MFF	Year	2021	2022	2023	2024	2025	2026	2027	TOTAL
Operational expenditure	Commitments	0,730	0,380	0,200	0,200	0,200	0,200	0,200	2,110
	Payments	0,730	0,380	0,200	0,200	0,200	0,200	0,200	2,110
<b>TOTAL appropriations for ECBGA</b>	Commitments	0,730	0,380	0,200	0,200	0,200	0,200	0,200	2,110
	Payments	0,730	0,380	0,200	0,200	0,200	0,200	0,200	2,110

These expenses will cover cost related to:

- Setting up a new access to the VIS within ECBGA, via a central access point, to be used by teams of staff involved in return-related operations or migration management support to access and search data entered in VIS.

**If more than one heading is affected by the proposal / initiative:**

TOTAL appropriations across HEADINGS of the multiannual financial framework (Reference amount)	Commitments	42,916	51,184	49,493	9,688	9,366	9,418	9,480	181,545
	Payments	33,916	48,934	49,268	16,775	12,741	10,430	9,480	181,545

Heading of multiannual financial framework	7	Administrative expenditure
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DG HOME	Year	2021	2022	2023	2024	2025	2026	2027	TOTAL
Human resources <sup>85</sup>	Commitments	0,074	0,074	0,074	0,037	0	0	0	<b>0,259</b>
	Payments	0,074	0,074	0,074	0,037	0	0	0	<b>0,259</b>
Other administrative expenditure	Commitments								
	Payments								
<b>TOTAL appropriations Under HEADING 7 of the multiannual financial framework</b>	Commitments	0,074	0,074	0,074	0,037	0	0	0	<b>0,259</b>
	Payments	0,074	0,074	0,074	0,037	0	0	0	<b>0,259</b>

EUR million (to three decimal places)

	Year	2021	2022	2023	2024	2025	2026	2027	TOTAL
<b>TOTAL appropriations across HEADINGS</b>	Commitments	42,990	51,258	49,567	9,725	9,366	9,418	9,480	181,804
of the multiannual financial framework	Payments	33,990	49,008	49,342	16,812	12,741	10,430	9,480	181,804

<sup>85</sup> The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

### 3.2.1.1. Europol summary

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

<b>Europol</b>	2021	2022	2023	2024	2025	2026	2027	<b>Total</b>
Officials								
Contract staff			<b>0,148</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>1,628</b>
<b>Subtotal</b>			<b>0,148</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>0,370</b>	<b>1,628</b>

The budget includes the additional staff necessary to ensure the manual verification of data when hits are obtained against Europol data (fingerprint specialists).

<b>Europol</b>	2021	2022	2023	2024	2025	2026	2027
XX 01 02 01 (AC, END, INT from the 'global envelope')	0	0	2	5	5	5	5
	<b>0</b>	<b>0</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>

The estimate is based on the assumption that the Europol data will generate a hit in 0,1% cases of 16M applicants a year, hence 16,000 cases of verification/year, approx. 44 cases/day, a fingerprint expert doing approximately 8 cases/day, hence 4 persons would be needed. We propose 5 experts, to take into account the need to ensure presence 7days/week, 24hours/day (as the VIS works around the clock and the consulates around the globe may be sending applications at any time of the day).

The figures provided assume only contract staff would be used.

### 3.2.1.2. Eu-LISAs

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

<b>Eu-LISA</b>	2021	2022	2023	2024	2025	2026	2027	<b>Total</b>

Human resources	0,942	1,376	1,302	0,651	0,286	0,286	0,286	5,129
Other administrative expenditure								
<b>Subtotal human resources of the multiannual financial framework</b>	<b>0,942</b>	<b>1,376</b>	<b>1,302</b>	<b>0,651</b>	<b>0,286</b>	<b>0,286</b>	<b>0,286</b>	<b>5,129</b>

<b>eu-LISA</b>	2021	2022	2023	2024	2025	2026	2027
Establishment plan posts (officials and temporary staff)							
	4	6	6	3	2	2	2
External staff							
XX 01 02 01 (AC, END, INT from the 'global envelope')	5	7	6	3			
<b>TOTAL for eu-LISA</b>	<b>9</b>	<b>13</b>	<b>12</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>2</b>

The gradual recruitment of up to 6 temporary agents and 7 contract agents (technical experts) is planned to be implemented gradually as of January 2021, with a peak in 2022 when the development activity reaching full speed. Some staff must be available as of early 2021 in order to allow starting the three year development period in due time with a view of ensuring an entry into operations of the full new functionality by 2024. The resources will be devoted to project and contract management as well as the development and testing of the system.

Two temporary agents should be maintained after the development period, as the management of the system entails an increased workload once the VIS is expanded to new data (long stay documents and their holders), new access (ECBGA), and new functionality, hence more staff is needed for monitoring, maintenance, security of the system.

The estimated human resources included in the proposal are the additional number of staff on top of the existing baseline staffing and additional staff of other proposals (in particular interoperability).

From the complete set of changes to VIS included in the current proposal, there are four elements which are of particular significance as they add (as opposed to extend) functionalities to the current VIS: including copy of travel documents, lowering the fingerprinting age, including residence documents and long-stay visas in VIS, and including automated security checks.

The first table shows that adding travel documents and lowering the fingerprinting age are assumed to deliver results within 18 months. The last two projects are much more significant and require a project organisation on their own. Delivery is therefore expected within 3 years.

For each project the assumption is made that the project will be executed by an external contractor managed by eu-LISA staff. As the projects are expected to be conducted during the period 2020 till 2023, the assumption cannot be made to use existing resources as eu-LISA

has already to deliver an important project portfolio in addition to maintain and operate the existing systems.

For each project a team is added for the development phase. The team size and composition are based on a comparison with other projects and have been adapted for the characteristics of each system: adding long-stay visa and residence permits is database intensive while including the security checks put comparatively more focus on transactions.

The first year after completion of development, the development team is reduced by half to transition to maintenance/operations. Two additional staff are added for maintenance and operations as the addition of long-stay visas and residence permits imply a significant extension of the end-user community which will imply more requests for changes and intervention.

Finally from the total number of staff required, a split is made about 50/50 over Temporary Agents (TA) and Contractor Agents (CA) during development phase. For the maintenance phase there is an advantage to keep knowledge within the organisation and hence to rely only on TA.

		Year	Year	Year	Year	Year	Year	Year	TOTAL
		2020	2021	2022	2023	2024	2025	2026	
<b>Development / Operations</b>									
Travel documents									
Fingerprints									
Residence documents									
Security checks									
<b>Including copy of travel document to VIS</b>									
Project manager/Solution architect		1	0,5						1,5
<b>Lowering the fingerprinting age</b>									
Project manager/Solution architect		1	0,5						1,5
<b>Including Residence documents and long-stay visas in VIS</b>									
Project manager		1	1	1	0,5				3,5
Solution architect		1	1	1	0,5				3,5
Database designer		1	1	1	0,5				3,5
Application administrator		1	1	1	0,5				3,5
System testing			3	3	1	1	1	1	10
<b>Automated security checks</b>									

Project manager	1	1	1	0,5				3,5
Solution architect	1	1	1	0,5				3,5
Database designer	0,5	0,5	0,5	0,5				2
Application administrator	0,5	0,5	0,5	0,5				2
System testing		2	2	1	1	1	1	8

Temporary agent	4	6	6	3	2	2	2	25
Contract agent	5	7	6	3				21
<b>TOTAL</b>	<b>9</b>	<b>13</b>	<b>12</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>46</b>

### 3.2.2. Estimated impact on appropriations of an administrative nature

#### 3.2.2.1. DG Home: Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2021	2022	2023	2024	2025	2026	2027	TOTAL
--	------	------	------	------	------	------	------	-------

HEADING 7 of the multiannual financial framework								
Human resources	0,074	0,074	0,074	0,037	0	0	0	<b>0,259</b>
Other administrative expenditure								
<b>Subtotal HEADING 7 of the multiannual financial framework</b>	<b>0,074</b>	<b>0,074</b>	<b>0,074</b>	<b>0,037</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0,259</b>
<b>Total</b>	<b>0,074</b>	<b>0,074</b>	<b>0,074</b>	<b>0,037</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0,259</b>

There are no costs outside Heading 7.

#### 3.2.2.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

DG HOME <sup>86</sup>	2021	2022	2023	2024	2025	2026	2027
External staff <sup>87</sup>							

<sup>86</sup> The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>87</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

XX 01 02 01 (AC, END, INT from the 'global envelope')	1	1	1	0.5			
<b>TOTAL for DG HOME</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0.5</b>			

A contract agent should be hired for the preparatory work leading to the implementation of the measures foreseen under this proposal, such as those related to preparing the implementing acts and launching public procurement contracts.

### 3.2.3. *Compatibility with the current multiannual financial framework*

- x The proposal/initiative is compatible the current multiannual financial framework. In case the proposal is adopted before the next financial framework, the necessary resources (estimated to 1.5 MEuro) will be financed from ISF-Borders and Visa budget line.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

### 3.2.4. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>88</sup>							
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			
Article .....									

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

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<sup>88</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.