Council of the European Union

Brussels, 1 February 2021
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5537/21

Interinstitutional Files:
2018/0152/A(COD)
2018/0152/B(COD)

VISA 18
FRONT 20
MIGR 18
IXIM 26
SIRIS 10
COMIX 45
CODEC 84

'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. prev. doc.:	5087/21
Subject:	Visa Information System (VIS) • 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 • Draft Regulation of the European Parliament and of the Council amending Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 as regards the establishment of the conditions for accessing other EU information systems for VIS purposes – Confirmation of the final compromise text with a view to an agreement

1. After a thorough evaluation of the VIS, on 16 May 2018 the Commission submitted a legislative proposal to amend the VIS Regulation[1], which is considered to be an important initiative in the context of ensuring interoperability between systems and databases in the area of justice and home affairs.

1 8853/18.

2. At its meeting on 19 December 2018, the Permanent Representatives Committee granted the Austrian Presidency a mandate to enter into negotiations with the EP[2]. On 17 June 2020, the Permanent Representatives Committee amended that mandate, in order to include the VIS consequential amendments[3].

3. In the EP, the lead committee is the Civil Liberties, Justice and Home Affairs (LIBE) Committee. Mr Carlos Coelho (EPP, PT) was appointed rapporteur. The LIBE Committee voted on the report on 4 February 2019. Given the short time remaining before the end of the eighth parliamentary term, the EP negotiating team decided, on 24 January 2019, to postpone the start of the negotiations on the proposal until the new EP was constituted. On 13 March 2019 the EP adopted its legislative resolution on the proposal, thus concluding its first reading[4].

4. Under the new EP legislature, on 4 September 2019, Paulo Rangel (EPP, PT) was appointed as the new rapporteur for the proposal. On 24 September 2019, the LIBE Committee decided to open interinstitutional negotiations after the first reading in the Parliament and that decision was subsequently announced in the plenary on 9 October 2019.

5. The European Economic and Social Committee adopted its opinion on 19 September 2018[5].

6. The European Data Protection Supervisor delivered its opinion on 12 December 2018[6].

7. At the request of the EP, the EU Agency for Fundamental Rights delivered an opinion on 30 August 2018[7].

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2 15726/18.
3 8787/20.
4 T8-0174/2019, 7401/19.
5 EESC 2018/03954, OJ C 440, 6.12.2018, p. 154–157.
6 Summary of the Opinion of the European Data Protection Supervisor on the Proposal for a new Regulation on the Visa Information System, OJ C 50, 8.2.2019, p. 4–8.
7 FRA Opinion – 2/2018. https://fra.europa.eu/en/publication/2018/revised-visa-information-system-and-its-fundamental-rights-implications

8. The interinstitutional negotiations started in October 2019, under Finland's Presidency. Six political trilogues (22 October, 11 December 2019, 20 February, 27 October, 2 December, 8 December 2020) were held. In addition to those political trilogues, a total of 26 technical meetings, prepared for with numerous informal meetings, took place.

9. Delegations were kept informed throughout on the development of the negotiations, with some 13 meetings of the JHA Counsellors convened by the three presidencies that negotiated the text, namely (in chronological order) that of Finland, Croatia and Germany. At the last of those meetings, on 16 December 2020, the final package was presented to the delegations by the German Presidency and the final four-column tables were circulated soon after[8].

10. On 22 January 2021 COREPER analysed the agreement reached on the revised VIS Regulation and the consequential amendments, contained in document 5087/21, and expressed a very broad support to the two texts.

11. On 27 January 2021, the LIBE Committee of the European Parliament confirmed by vote the texts agreed in the trilogue. Subsequently, the Chair of the LIBE Committee sent a letter to the Chair of the Permanent Representatives Committee, confirming that, should the Council approve these texts in first reading after legal-linguistic revision, the Parliament would approve the Council's position in its second reading. The texts of the two Regulations, as voted by LIBE, were attached to the letter (see Annexes).

12. The compromise texts submitted by the European Parliament are identical to the compromise texts provided to the Permanent Representatives Committee on 22 January 2021, attached to document 5087/21. Compared to those texts, the texts in Annex II and III of this note are plain (no marking) and have been renumbered (recitals, amending points and Articles). A few clerical and factual mistakes have also been corrected.

13. With a view to enabling an early second reading agreement between the Council and the European Parliament on these legislative texts, the Permanent Representatives Committee is invited to confirm the compromise texts as set out in Annex II and III to this note, with a view to coming to an agreement.

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8 WK 14837/2020.

E-MAIL

European Parliament

IN 001046 2021
01.02.2021

Committee on Civil Liberties, Justice and Home Affairs
The Chairman

IPOL-COM-LIBE D (2021) 2002

Mr. Nuno Brito
Chair of COREPER (II)
Council of the European Union
Rue de la Loi 175
1048 Brussels

D 300634 01.02.2021

Subject: Council's position in view of the adoption of a Regulation of the European Parliament and of the Council on reforming the Visa Information System (2018/0152A(COD)) and a Regulation regarding the establishment of the conditions for accessing other EU information systems for VIS purposes (2018/0152B(COD))

Dear Ambassador Brito,

I understand that at its meeting of 21 January 2021 COREPER decided to accept the outcome of the interinstitutional negotiations regarding the abovementioned Regulations.

Following the vote on the outcome of the interinstitutional negotiations regarding the abovementioned Regulations that took place in the meeting of the Committee on Civil Liberties, Justice and Home Affairs of 27 January 2021, I would like to inform you that the Committee also considered positively the acceptance of the texts set out in the Annex which reflect the outcome of the negotiations between the three Institutions.

Thus, I would like to inform you that, if these texts as they stand in the Annex were to be transmitted formally to the European Parliament as the Council's position at first reading, I will recommend to the Members of the Committee on Civil Liberties, Justice and Home Affairs and subsequently to the Plenary that the Council's position at first reading be accepted without amendments in Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.

At the same time, I would like to thank the Portuguese Presidency and the previous Council Presidencies for the efforts made and the work accomplished to achieve an early second reading agreement on these files.

Yours sincerely,

Juan Fernando López Aguilar

Annex: text agreed

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ANNEX II

REGULATION (EU) …

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System

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 77(2)(a) (b), (d) and (e) and Article 87(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[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .
[2] OJ C , , p. .

Whereas:

(1) The Visa Information System (VIS) was established by Council Decision 2004/512/EC[3] 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[4] (the 'VIS Regulation') laid down the purpose, functionalities and responsibilities of the VIS, 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[5] set out the rules on the registration of biometric identifiers in the VIS. Council Decision 2008/633/JHA[6] 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. The VIS started operations on 11 October 2011[7] and was gradually rolled out in all Member States' consulates around the world between October 2011 and February 2016.

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3 Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5).

4 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).

5 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).

6 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).

7 Commission Implementing Decision 2011/636/EU of 21 September 2011 determining the date from which the Visa Information System (VIS) is to start operations in a first region (OJ L 249, 27.9.2011, p. 18).

(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[8] 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'[9] 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.

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8 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).

9 COM(2016) 205 final.

(4) In the 2016 Roadmap to enhance information exchange and information management[10], and in Council Conclusions of 9 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems[11], the Council invited the Commission to undertake a feasibility study 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[12] 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[13] 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.

(5) The Communication of the Commission of 27 September 2017 on the 'Delivery of the European Agenda on Migration'[14] 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.

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

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

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

13 "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).

14 COM(2017) 558 final, p.15.

(6) The Communication of the Commission of 14 March 2018 on adapting the common visa policy to new challenges[15] reaffirmed that the VIS legal framework would be revised, as part of a broader process of reflection on the interoperability of information systems.

(7) 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. There are no means to check whether applicants for or holders of those documents could pose a threat to the security of the Member States other than the one processing the application for a long-stay visa or residence permit. In order to address the existing information gap, information on applicants for and holders of long-stay visas and residence permits should be stored in the VIS. As regards those documents, the VIS should have the purpose of supporting a high level of security, which is particularly important for the Schengen area as an area without internal border controls, by contributing to the assessment of whether the applicant is considered to pose a threat to public policy, internal security or public health. It should also aim at improving the effectiveness and efficiency of checks at the external borders and of checks within the territory of the Member States carried out in accordance with EU law or national law. The VIS should also assist in the identification, in particular in order to facilitate the 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. It should finally contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences; ensure the correct identification of persons; facilitate the application of Regulation (EU) No 604/2013 and of Directive 2013/32/EU and support the objectives of the Schengen Information System (SIS).

[15] COM(2018) 251 final.

(8) Council Decision 2004/512/EC and Council Decision 2008/633/JHA should be integrated into the VIS Regulation to consolidate the rules on the establishment and use of the VIS in a single regulation.

(9) The VIS Regulation should also lay down the architecture of the VIS. The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) should be responsible for the technical development and operational management of the VIS and its components. Where eu-LISA cooperates with external contractors in any VIS-related tasks, it should closely monitor the activities of the contractor to ensure compliance with all provisions of this Regulation, in particular on security, confidentiality and data protection. The operational management of the VIS should not be entrusted to private companies or private organisations.

(10) 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[16] 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[17] confirmed this finding in December 2017 and provided further insight into the effect of aging over fingerprint quality. On this basis, 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[18] 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). At the same time, children are a particularly vulnerable group and collecting biometric data from them should be subject to stricter safeguards and a limitation of the purposes for which these data may be used to situations where it is in the child's best interests, including by limiting the retention period for data storage. The second study also showed that fingerprints of elderly persons are of lower quality and medium accuracy and recommended measures to mitigate those shortcomings. Member States should follow the recommendations identified in the study with the objective to improve the quality of fingerprints and biometric matching.

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16 "Fingerprint Recognition for Children" (2013 - EUR 26193).

17 "Automatic fingerprint recognition: from children to elderly" (2018 – JRC).

18 "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).

(11) 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.

(12) The visa procedure and the VIS should benefit from the technology developments related to facial image recognition. Taking live facial images upon submission of applications should be the rule when recording the facial image of applicants in the VIS, also when processing long-stay visa and residence permit applications, where this is allowed by national legislation. Taking live facial images upon submission of applications will also contribute to addressing biometric vulnerabilities such as 'face-morphing' used for identity fraud. Only facial images taken live should be used for biometric macthing.

(13) Biometric data, which in the context of this Regulation entails fingerprints and facial images, are unique and therefore much more reliable than alphanumeric data for the purposes of identifying a person. However, biometric data constitute sensitive personal data. This Regulation thus lays down the basis and safeguards for processing such data for the purpose of uniquely identifying the persons concerned.

(14) 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 into the territory of the Member States could pose a threat to the public security or to public health and also to assess the risk of irregular migration of the applicant. As regards applicants for a long stay visa or a residence permit, these checks should be limited to assessing whether the third country national could pose a threat to public policy, internal security or public health.

(15) The assessment of such risks cannot be carried out without processing the personal data related to the person's identity, travel document, and other relevant data. 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 Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), the Eurodac, the ECRIS-TCN system as far as convictions related to terrorist offences or other forms of serious criminal offences are concerned, the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD), and/or the Interpol Travel Documents Associated with Notices database (Interpol TDAWN)) or against the ETIAS watchlist referred to in Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System, 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.

(16) Interoperability between EU information systems was established by Regulations (EU) 2019/817 and 2019/818 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 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.

(17) 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.

(18) 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) established by Regulation (EU) 2019/817 of the European Parliament and of the Council 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.

(19) The European Search Portal (ESP), established by Regulation (EU) 2019/817 of the European Parliament and of the Council, will enable the data stored in VIS to be compared to the data stored in every other information system by means of a single query.

(20) 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 ETIAS watchlist, the application should be verified manually by an operator in the responsible authority. Depending on the type of data triggering the hit, the hit should be manually verified and assessed by the competent visa or immigration authority, by the ETIAS National Unit referred to in Regulation (EU) 2018/1240 or by a central authority designated by the Member State (‘VIS designated authority’). As hits generated by law enforcement or judicial databases or systems are generally more sensitive, they should not be verified and assessed by consulates, but rather by the VIS designated authorities or the ETIAS National Units. Member States should be able to designate more than one authority as VIS designated authority. The SIRENE Bureau should only be designated as the VIS designated authority if it is allocated sufficient additional resources enabling it to fulfil this task. The assessment of the hits performed by the responsible authority should be taken into account for the decision to issue or not the short-stay visa or when assessing whether the applicant for a long-stay visa or residence permit could pose a threat to the public policy, or internal security, or public health of the Member States.

(21) As the VIS will be part of the common framework of interoperability, the development of new features and processes must be fully coherent with those in the other IT systems that are part of this framework. The automated queries that will be launched by the VIS with the purpose of finding whether information on visa or residence permit applicants is known to other systems will result in hits against other IT systems. A similar system of queries is currently present in only one other system - ETIAS, while the concept of hits is also encountered in the EES, including in relation to the EES-VIS interoperability and in the SIS. The concept of 'hit' used in this Regulation should be understood as having found corresponding data applicable to the queries launched with VIS data. The existence of the hit should trigger, as and where appropriate, a manual additional verification of the data stored in the VIS or other system, to ensure that the authorities processing a visa or a residence permit application receive all the appropriate information that are necessary to decide on that application.

(22) Refusal of an application for a short-stay visa should not be based only on the automated processing of personal data in the applications.

(23) 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 810/2009 should apply.

(24) The use of specific risk indicators corresponding to previously identified security, irregular migration or high epidemic risks should contribute to analysing 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.

To the extent possible and where relevant, the rules, procedures and governance structure for the specific risk indicators should be aligned with those for the ETIAS screening rules, as laid down in Article 9, 10 and 33 of Regulation (EU) 2018/1240.

The specific risk indicators should be defined, established, assessed ex ante, implemented, evaluated ex post, revised and deleted by the ETIAS Central Unit referred to in Regulation (EU) 2018/1240 following consultation of an VIS Screening Board composed of representatives of the central visa authorities and the agencies involved. To help ensure the respect of fundamental rights in the implementation of the specific risk indicators, an VIS Fundamental Rights Guidance Board should be established. The secretariat for its meetings should be provided by the Fundamental Rights Officer of the European Border and Coast Guard Agency.

(25) The continuous emergence of new forms of security risks, new patterns of irregular migration and high epidemic risks 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 and proportionate in a democratic society.

(26) 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 apply for a long stay visa or a residence permit, as for third country nationals applying for a travel authorisation in accordance with Regulation (EU) 2018/1240. To this end the ETIAS watchlist consisting of data 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.

(27) In order to fulfil their obligation under the Convention implementing the Schengen Agreement, international carriers should verify whether or not third country nationals who are required to hold a short-stay visa, a long stay visa or a residence permit are in possession of these valid documents by sending a query to VIS. 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. The application file itself should not be accessible to carriers. The technical specifications for accessing VIS through the carrier gateway should limit the impact on passenger travel and carriers to the extent possible. For this purpose, integration with the carrier gateways for the EES and ETIAS should be considered.

(28) With a view to limiting the impact of the obligations set out in this Regulation on international carriers transporting groups overland by coach, user-friendly mobile solutions should be made available.

(29) The assessment of the appropriateness, compatibility and coherence of provisions referred to in Article 26 of the Convention implementing the Schengen Agreement on the gradual abolition of checks at their common borders for the purposes of the ETIAS provisions for overland transport by coaches referred to in recital 36 of Regulation (EU) 2018/1240 should be extended to the provisions of this Regulation.

(30) 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 applications for and decisions on long stay visas and residence permits for the specific purposes set out in this Regulation, and to the extent necessary for the performance of their tasks.

(31) 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. Therefore access of certain authorities to data of persons having continously held residence permits recorded in the VIS for more than 10 years should be restricted.

(32) 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, race, 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.

(33) 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.

(34) 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.

(35) 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[19].

(36) 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.

(37) Regulation (EU) 2019/817 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.

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[19] 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).

(38) 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.

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

(40) 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.

(41) To protect personal data and to exclude systematic searches by law enforcement authorities, 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.

(42) The personal data 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.

(43) Regulation (EU) 2016/679 of the European Parliament and of the Council[20] 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[21].

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[20] 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).

[21] 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).

(44) 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) 2019/1896 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, they 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.

(45) 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[22], is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.

(46) 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 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.

[22] 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).

(47) Personal data stored in the VIS should not be transferred or made available to any third country or international organisation. As an exception to that rule, however, it should be possible to transfer such personal data to a third country or to an international organisation where such a transfer is subject to strict conditions and necessary in individual cases in order to assist with the identification of a third-country national in relation to his or her return or resettlement. In the absence of an adequacy decision by means of implementing act pursuant to Regulation (EU) 2016/679 or of appropriate safeguards to which transfers are subject pursuant to that Regulation, it should exceptionally be possible to transfer, VIS data to a third country or to an international organisation for the purposes of return or resettlement, only where the transfer is necessary for important reasons of public interest as referred to in that Regulation.

(48) It should also be possible to transfer personal data obtained by Member States pursuant to this Regulation to a third country in an exceptional case of urgency, where there is an imminent danger associated with a terrorist offence or where there is an imminent danger to the life of a person associated with a serious criminal offence. An imminent danger to the life of a person should be understood as covering a danger arising from a serious criminal offence committed against that person such as grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage-taking, sexual exploitation of children and child pornography, and rape. Such data should only be transferred to a third country if the reciprocal provision of any information on visa records held by the requesting third country to the Member States operating the VIS is ensured.

(49) Regulation (EU) 2018/1725 of the European Parliament and the Council[23] applies to the activities of the Union institutions or bodies when carrying out their tasks as responsible for the operational management of VIS.

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23 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(50) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 12 December 2018.

(51) 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[24], is a compulsory element of the short-stay 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.

(52) Without prejudice to Member States' responsibility for the accuracy of data entered into VIS, eu-LISA should be responsible for reinforcing data quality by developing and maintaining a central data quality monitoring tool, and for providing reports at regular intervals to the Member States.

(53) 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, eu-LISA should store certain statistical data in the central repository for reporting and statistics in accordance with Regulation (EU) 2019/817. None of the produced statistics should contain personal data.

(54) 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 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.

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[24] 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).

(55) 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.

(56) This Regulation is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council.[25]

(57) 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.

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[25] 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).

(58) 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.

(59) 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 or public health threat they could represent. Indeed, the examination of their visa applications should be made exclusively against the security or public health concerns, and not those related to migration risks.

(60) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, 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.

(61) 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[26]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

[26] 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).

(62) 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 latters' association with the implementation, application and development of the Schengen acquis[27] which fall within the area referred to in Article 1, point A, B, C and F of Council Decision 1999/437/EC[28].

(63) 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*[29] which fall within the area referred to in Article 1, point A, B, C and F of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[30] and with Article 3 of Council Decision 2008/149/JHA[31].

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27 OJ L 176, 10.7.1999, p. 36.

28 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).

29 OJ L 53, 27.2.2008, p. 52.

30 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.

31 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).

(64) 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 development of the Schengen *acquis*[32] which fall within the area referred to in Article 1, point A, B, C and F of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[33] and with Article 3 of Council Decision 2011/349/EU.[34]

(65) As regards Cyprus, Bulgaria, Romania and Croatia, the provisions of this Regulation constitute provisions 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 read in conjunction with Council Decision (EU) 2017/1908[35] and Article 4(2) of the 2011 Act of Accession,

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32 OJ L 160, 18.6.2011, p. 21.

33 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).

34 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).

35 Council Decision (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System in the Republic of Bulgaria and Romania (OJ L 269, 19.10.2017, p. 39–43).

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) The title is replaced by the following:

"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 information between Member States on short-stay visas, long-stay visas, and residence permits (VIS Regulation)"

(2) Article 1 is amended as follows:

(a) the first sub-paragraph is replaced by the following:

"This Regulation establishes the Visa Information System (VIS) and defines the purpose and functionalities of and the responsibilities for the system. It sets up the conditions and procedures for the exchange of data between Member States on applications for short-stay visas and on the decisions taken in relation thereto, including the decision whether to annul, revoke or extend the visa, to facilitate the examination of such applications and the related decisions.";

(b) the following sub-paragraph is added after the first sub-paragraph:

"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.**"**

(3) 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 for short stays, consular cooperation and consultation between visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order to:

(a) facilitate the visa application procedure;

(b) prevent the bypassing of the criteria for the determination of the Member State responsible for examining the application for a visa;

(c) facilitate the fight against fraud;

(d) facilitate checks at external border crossing points and within the territory of the Member States;

(e) 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) assist in the identification of persons in specific circumstances as referred to in Article 22p;

(g) 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) contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;

(i) contribute to the prevention of threats to the internal security of any of the Member States;

(j) contribute to 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 or vulnerable persons, persons sought to assist with a judicial procedure and persons for discreet checks, inquiry 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 applications and decisions related thereto, in order to:

(a) support a high level of security in all Member States by contributing to the assessment of whether the applicant or holder of a long-stay visa or a residence permit is considered to pose a threat to public policy, internal security or public health.

(b) facilitate checks at external border crossing points and within the territory of the Member States;

(c) 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;

(d) contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;

(e) contribute to the correct identification of persons;

(f) assist in the identification of persons in specific circumstances as referred to in Article 22p;

(g) facilitate the application of Regulation (EU) No 604/2013 and of Directive 2013/32/EU;

(h) 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 or vulnerable persons, persons sought to assist with a judicial procedure and ~~on~~ persons for discreet checks, inquiry checks or specific checks.

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* 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).";

(4) the following Article is inserted:

"*Article 2a*

Architecture

1. VIS shall be based on a centralised architecture and shall consist of:

(a) the common identity repository established by Article 17(1) of Regulation 2019/817;

(b) a central information system (the 'VIS Central System');

(c) national uniform interfaces (NUIs) in each Member State based on common technical specifications and identical for all Member States enabling the VIS Central System to connect to the national infrastructures in Member States;

(d) a communication infrastructure between the VIS Central System and the NUIs;

(e) a secure communication channel between the VIS Central System 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 2019/817, shared biometric matching service established by Article 12 of Regulation 2019/817, the common identity repository established by Article 17 of Regulation 2019/817 and the multiple-identity detector established by Article 25 of Regulation 2019/817;

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

(h) a carrier gateway;

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

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

The VIS Central System, the national uniform interfaces, the web service, the carrier gateway and the VIS communication infrastructure 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.

2. There shall be at least two NUIs referred to in paragraph 1(c) for each Member State, which shall provide the physical connection between Member States and the physical network of VIS. The connection through the communication infrastructure referred to in paragraph 1(d) shall be encrypted. The NUIs shall be located at the Member State premises. The NUIs are to be used exclusively for purposes defined by Union legislation.

3. The communication infrastructure shall support and contribute to ensuring the uninterrupted availability of the VIS. It shall include redundancies for the connections between the VIS Central System and the the backup VIS Central System and shall also include redundancies for the connections between each NUI and VIS Central System and backup VIS Central System. The communication infrastructure shall provide an encrypted virtual private network dedicated to VIS data and to communication among Member States and between Member States and eu-LISA.

4. The VIS Central System shall perform technical supervision and administration functions and have a backup VIS Central System, capable of ensuring all functionalities of the VIS Central System in the event of failure of that system. The VIS Central System, shall be located in Strasbourg (France) and a back-up VIS Central System, shall be located in Sankt Johann im Pongau (Austria).

5. eu-LISA shall implement technical solutions to ensure the uninterrupted availability of VIS either through the simultaneous operation of the VIS Central System and the backup the VIS Central System, provided that the backup the VIS Central System remains capable of ensuring the operation of the VIS in the event of a failure of the VIS Central System, or through duplication of the system or its components. ”;

(5) Article 3 is deleted;

(6) Article 4 is amended as follows:

(a) points (3) to (5) are replaced by the following:

"(3) ‘visa authorities’ means the authorities which in each Member State are responsible for examining and for taking decisions on visa applications or for decisions whether to annul, revoke or extend visas, including the central visa authorities and the authorities responsible for issuing visas at the border;

(3a) ‘designated authority’ means an authority designated by a Member State pursuant to Article 22l(1) as responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences;

(3b) "VIS designated authority" means an authority designated by a Member State pursuant to Article 9d(1) as responsible for the manual verification and follow-up of hits referred to in that paragraph.

(3c) ‘ETIAS Central Unit’ means the unit established within the European Border and Coast Guard Agency by Article 7 of Regulation (EU) 2018/1240;

(4) ‘application form’ means the uniform application form for visas in Annex I to Regulation (EC) No 810/2009;

(5) ‘applicant’ means any person who has lodged an application for a visa, long-stay visa or residence permit;";

(b) 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, 22a to 22f;

(13) 'identity data' means the data referred to in Article 9(4)(a) and (aa) and Article 22a(1)(d);

(14) ‘fingerprint data’ means the VIS data relating to fingerprints;

(15) ‘facial image’ means digital image of the face;

(16) ‘hit’ means the existence of a correspondence established by an automated comparison of the personal data recorded in an application file of the VIS with the specific risk indicators referred to in Article 9j or with the personal data present in a record, file or alert registered in the VIS, in another EU information system or database listed in Articles 9a or 22b (‘EU information systems’), in Europol data or in an Interpol database queried by the VIS;

(17) '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*;

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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).

(18) '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;

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** 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)

(19) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention;

(20) ’supervisory authorities’ means the supervisory authority referred to in Article 51(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council*** and the supervisory authority referred to in Article 41 of Directive (EU) 2016/680 of the European Parliament and of the Council****;

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*** 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).

**** 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).

(21) 'law enforcement' means the prevention, detection or investigation of terrorist offences or other serious criminal offences;

(22) 'terrorist offences' mean the offences under national law referred to in Articles 3 to 14 of Directive (EU) 2017/541 of the European Parliament and of the Council***** or equivalent to one of those offences for the Member States which are not bound by that Directive;

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***** 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).

(23) 'serious criminal offence' means the offence which corresponds or is equivalent to one of the offences 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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****** 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)";

(7) 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*:*

(i) on the 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,

(ii) on the applicant for a long-stay visa or a residence permit and on long-stay visas and residence permits requested, issued, withdrawn, refused, annulled, revoked, renewed or extended referred to in Articles 22a, 22c, 22d, 22e and 22f,

(iii) regarding the hits referred to in Articles 9a and 22b and the reasonable opinions referred to in Article 9c, 9g and 22b;

(b) facial images referred to in Article 9(5) and Article 22a(1)(j);

(c) fingerprint data referred to in Article 9(6) and Article 22a(1)(k);

(ca) scans of the biographic data page of the travel document referred to in Article 9(7) and Article 22a(1)(h);

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

1b. Verification and identification in the VIS with a facial image shall only be possible against facial images recorded in the VIS with the indication that the facial image was taken live upon submission of the application, in accordance with Article 9(5) and Article 22a(1)(j).

2. The messages transmitted by the VISMail, 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 (ca), Article 9(5) and 9(6), Article 22a(1)(d) to (g), (j) and (k). The remaining VIS data shall be stored in the VIS Central System.";

(8) 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.

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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).";

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).

(9) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Access to the VIS for entering, amending or deleting the data referred to in Article 5(1) in accordance with this Regulation shall be reserved exclusively to the duly authorised staff of the visa authorities and to the authorities competent to decide on an application for a long-stay visa or residence permit in accordance with Article 22a to 22f. The number of duly authorised members of staff shall be limited by the actual needs of their service.";

(b) 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 22g to 22m, and Article 45e, as well as for the purposes laid down in Articles 20 and 21 of Regulation (EU) 2019/817.

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.";

(c) the following paragraphs are inserted:

"2a. By way of derogation from the provisions on the use of data provided for in Chapters II, III and IIIa, fingerprint data and facial images of children may only be used to search the VIS and in the case of a hit be accessed to verify the child's identity in the visa application procedure in accordance with Article 15 and at the external borders or within the territory of the Member States in accordance with Articles 18, 19 or 20 or 22g, 22h or 22i respectively. Where the search with alphanumerical data cannot be performed due to the lack of a travel document, the fingerprint data of children may also be used to search the VIS in the asylum procedure in accordance with Articles 21, 22, 22j or 22k.

2b. By way of derogation from the provisions on the use of data provided for in Article 22h, in case of persons who have held valid residence permits recorded in the VIS for a period of ten years or more without interruptions, the authorities competent for carrying out checks within the territory of the Member States shall only be given access to consult data referred in Article 22c (d), (e), (f) and the status information of the residence permit.

By way of derogation from the provisions on the use of data provided for in Article 22i, in case of persons who have held valid residence permits recorded in the VIS for a period of ten years or more without interruptions, the authorities competent for carrying out checks within the territory of the Member States shall only be given access to consult data referred in Article 22c (c), (d), (e) and the status information of the residence permit. Where the person does not present a valid travel document or where there are doubts as to the authenticity of the travel document or where the verification in accordance with Article 22h has failed, the competent authorities shall also be given access to consult the data referred to in Article 22a(1)(d), (e), (f), (g) and (i).

2c. By way of derogation from the provisions on the use of data provided for in Articles 22j and 22k, the competent asylum authorities shall not have access to VIS data of persons who have held valid residence permits recorded in the VIS in accordance with Chapter IIIa of this Regulation, for a period of 10 years or more without interruption.

2d. By way of derogation from the provisions on the use of data provided for in chapter IIIb, the Member States' designated authorities and Europol shall not have access to VIS data of persons who have held valid residence permits recorded in the VIS in accordance with Chapter IIIa of this Regulation, for a period of 10 years or more without interruption.

2e. By way of derogation from the provisions on the use of data provided for in Articles 45e and 45f, the members of the European Border and Coast Guard teams, with the exception of border management teams, shall not have access to VIS data of persons who have held valid residence permits recorded in the VIS in accordance with Chapter IIIa of this Regulation, for a period of 10 years or more without interruption.";

(d) paragraph 3 is replaced by the following:

"3. Each Member State shall designate the competent authorities, the duly authorised staff of which shall have access to enter, amend, delete or consult data in the VIS. Each Member State shall without delay communicate a list of these authorities to the Commission and eu-LISA, in accordance with Article 45b. That list shall specify for what purpose each authority may process data in the VIS. Member States may at any time amend or replace their notifications.

The authorities entitled to consult or access the VIS for the purpose of prevention, detection and investigation of terrorist offences or of other serious criminal offences shall be designated in accordance with Chapter IIIb.";

(e) the following paragraph 4 is added:

"4. In addition to the communications mentioned in paragraph 3, each Member State shall also communicate to eu-LISA without delay a list of the operating units of the competent national authorities having access to the VIS for the purposes of this Regulation. This list shall specify for which purpose each operating unit is to have access to the data stored in the VIS. The VIS shall provide the functionality for the centralised management of this list.";

(f) 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).";

(10) In Article 7, paragraph 2 is replaced by the following:

"2. Processing of personal data within the VIS by each competent authority shall not result in discrimination against applicants, visa holders or applicants and holders of long-stay visas, and residence permits on the grounds of sex, race, 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.

It shall fully respect human dignity and the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, including the right to respect for one's private life and to the protection of personal data.

Particular attention shall be paid to children, the elderly and persons with a disability.";

(11) 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, in accordance with the safeguards laid down in the International Convention on the Rights of the Child.

The well-being, safety and security of the child shall be taken into consideration, especially where there is a risk that the child may be a victim of human trafficking. The views of the child shall also be taken into consideration, giving appropriate weight to the age and maturity of the child.";

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

"ENTRY AND USE OF DATA ON VISAS BY VISA AUTHORITIES"

(13) 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 three 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) 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 shall be indicated by "VIS 0"; furthermore, the system shall permit a distinction to be made between the cases pursuant to Article 13(7)(a) to (e) of Regulation (EC) No 810/2009.";

(c) the following paragraph 6 is inserted:

"6. Upon creation of the application file in accordance with the procedures referred to in paragraphs 1 to 5, the VIS shall automatically launch the queries pursuant to Article 9a and return results and the competent visa authority shall consult the VIS for the purpose of examining the application in accordance with Article 15.";

(14) Article 9 is amended as follows:

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

"(a) surname (family name); first name(s) (given names); date of birth; current nationality or nationalities; sex;

(aa) surname at birth (former family name(s)); place and country of birth; nationality at birth;

(b) the type and number of the travel document;

(c) the date of expiry of the validity of the travel document;

(ca) the country which issued the travel document and its date of issue;";

"(l) current occupation (job group) and employer; for students: name of educational establishment;";

(b) in point 4, the following point (n) is added:

"(n) if applicable, the fact that the applicant applies as a family member 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.";

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* 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

(c) point 5 is replaced by the following:

"5. the facial image of the applicant, in accordance with Article 13 of Regulation (EC) No 810/2009, with an indication if the facial image was taken live upon submission of the application;";

(d) point 6 is replaced by the following:

"6. fingerprints of the applicant, in accordance with Article 13 of Regulation (EC) No 810/2009.";

(e) the following point 7 is added:

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

(f) the following subparagraph is added at the end of Article 9:

"The applicant shall choose his or her current occupation (job group) from a predetermined list. The Commission shall adopt delegated acts in accordance with Article 48a to lay down this predetermined list.";

(15) the following new Articles 9a to 9l are inserted:

"*Article 9a*

Queries to other systems

1. The application files shall be automatically processed by the VIS to identify hit(s) in accordance with this Article. The VIS shall examine each application file individually.

2. When an application file is created, the VIS shall check whether the travel document related to that application is recognised in accordance with 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. If the search shows that the travel document is not recognised by one or more Member States, Article 25(3) of Regulation (EC) No 810/2009 shall apply where a visa is issued.

3. For the purpose of the verifications provided for in Article 21(1), Article 21(3)(a), (c), (d) and Article 21(4) of Regulation (EC) No 810/2009 and for the purpose of the objective referred to in point (k) of Article 2(1) of this Regulation, the VIS shall launch a query by using the European Search Portal established by Article 6(1) of Regulation (EU) 2019/817 to compare the relevant data referred to in points (4), (5) and (6) of Article 9 of this Regulation to the data present in a record, file or alert registered in*:*

- 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 34 of Regulation (EU) 2018/1240,
- the Eurodac,
- the ECRIS-TCN system,
- the Europol data,
- the Interpol Stolen and Lost Travel Document database (SLTD), and
- the Interpol Travel Documents Associated with Notices database (Interpol TDAWN).

The comparison shall be made with both alphanumeric and biometric data, unless the database or system concerned contains only one of those data categories.

4. In particular, the VIS shall verify:

(a) as regards the SIS, whether

(i) the travel document used for the application corresponds to a travel document which has been lost, stolen, misappropriated or invalidated;

(ii) the applicant is subject to an alert for refusal of entry and stay;

(iii) the applicant is subject to an alert on return;

(iv) the applicant is subject to an alert on persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant, or wanted for arrest for extradition purposes;

(v) the applicant is subject to an alert on missing or vulnerable persons who need to be prevented from travelling;

(vi) the applicant is subject to an alert on persons sought to assist with a judicial procedure;

(vii) the applicant or his travel document is subject to an alert on persons or objects for discreet checks, inquiry checks or specific checks;

(b) as regards the EES, whether

(i) the applicant is currently reported as an overstayer or whether he or she has been reported as an overstayer in the past in the EES;

(ii) the applicant is recorded as having been refused entry in the EES;

(iii) the intended stay of the applicant will exceed 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;

(c) as regards the ETIAS, whether

(i) the applicant is a person for whom an issued, refused, revoked or annulled travel authorisation is recorded in the ETIAS or whether his/her travel document corresponds to such issued, refused, revoked or annulled travel authorisation.

(ii) the data provided as part of the application correspond to data present in the watchlist referred to in Article 34 of Regulation (EU) 2018/1240;

(d) as regards the Eurodac, whether the applicant is registered in that database;

(e) as regards the ECRIS-TCN, whether the applicant corresponds to a person whose data have been recorded in that database over the previous 25 years, as far as convictions for terrorist offences are concerned, or over the previous 15 years, as far as other serious criminal offences are concerned;

(f) as regards Europol data, whether the data provided in the application correspond to data recorded in Europol data;

(g) as regards Interpol data, whether

(i) the travel document used for the application corresponds to a travel document reported lost, stolen or invalidated in the Interpol's SLTD;

(ii) the travel document used for the application corresponds to a travel document recorded in a file in Interpol's TDAWN.

5. SIS alerts in respect of missing or vulnerable persons, persons sought to assist with a judicial procedure and persons or objects for discreet checks, inquiry checks or specific checks shall be queried only for the objective referred to in Article 2(1)(k) of this Regulation.

6. As regards Interpol data referred to in point (g) of paragraph 3a, any queries and verification shall be performed in such a way that no information shall be revealed to the owner of the Interpol alert.

7. If the implementation of paragraph 3c is not ensured, VIS shall not query Interpol's databases.

8. As regards Europol data referred to in point (f) of paragraph 3a, the automated processing shall receive the appropriate notification in accordance with Article 21(1b) of Regulation (EU) 2016/794.

9. A hit shall be triggered where all or some of the data from the application file used for the query correspond fully or partially to the data present in a record, alert or file of the information systems referred to in paragraph 3. The manual referred to in Article 9h(2) shall define partial correspondence, including a degree of probability to limit the number of false hits.

10. Where the automatic comparison referred to in paragraph 3 reports a hit related to subpoints (i) to (iii) of point (a), point (b), subpoint (i) of point (c), point (d), subpoint (i) of point (g) of paragraph 3a, the VIS shall add a reference in the application file to any hit and, where relevant, the Member State(s) that entered or supplied the data having triggered the hit.

11. Where the automatic comparison referred to in paragraph 3 reports a hit related to subpoint (iv) of point (a), subpoint (ii) of point (c), point (e), point (f) and subpoint (ii) of point (g) of paragraph 3a, the VIS shall only record in the application file that further verifications are needed.

In the event of hits pursuant to subpoint (iv) of point (a), point (e), point (f) and subpoint (ii) of point (g) of paragraph 3a, the VIS shall send an automated notification regarding such hits to the VIS designated authority of the Member State processing the application. This automated notification shall contain the data recorded in the application file in accordance with Article 9(4), (5) and (6).

In the event of hits pursuant to subpoint (ii) of point (c) of paragraph 3a, the VIS shall send an automated notification regarding such hits to the ETIAS National Unit of the Member State that entered the data or, if the data was entered by Europol, to the ETIAS National Unit of the Member States processing the application. This automated notification shall contain the data recorded in the application file in accordance with Article 9(4).

12. Where the automatic comparison referred to in paragraph 3 reports a hit related to subpoints (v) to (vii) of point (a) of paragraph 3a, the VIS shall neither record the hit in the application file, nor shall it record in the application file that further verifications are needed.

13. The unique reference number of the data record having triggered a hit shall be kept in the application file for the purpose of keeping of logs, reporting and statistics in accordance with Articles 34 and 45a.

14. The VIS shall compare the relevant data referred to in points (a), (aa), (g), (h), (j), (k) and (l) of Article 9(4) to the specific risk indicators referred to in Article 9j.

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 outr 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:

   a) whether the applicant is currently reported as an overstayer or whether he or she has been reported as an overstayer in the past through consultation of the EES;

   b) whether 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 an alert for refusal of entry and stay as referred to in Article 24 of Regulation (EU) 2018/1861, 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 26(2) of Regulation (EU) 2018/1861.

4. The specific risk indicators based on illegal immigration risks determined pursuant to Article 9j shall not apply.

Article 9c

Manual verification and follow-up of hits by competent visa authorities

1. Any hit pursuant to Article 9a(10) shall be manually verified by the competent visa authority of the Member State processing the application.

2. For this purpose, the competent visa authority shall have access to the application file and any linked application files, as well as to the hits triggered during the automated processing pursuant to Article 9a(10).

   It shall also have temporary access to data in the EES, ETIAS, SIS, Eurodac or SLTD that triggered the hit for the duration of the verifications referred to in this Article and the examination of the visa application and in the event of an appeal procedure. Such temporary access shall be in accordance with the legal instruments governing the EES, ETIAS, SIS, Eurodac and SLTD.

3. The competent visa authority shall verify whether the identity of the applicant recorded in the application file corresponds to the data present in one of the consulted databases.

4. Where the personal data in the application file correspond to the data stored in the respective system, the hit shall be taken into account in the examination of the visa application pursuant to Article 21 of the Visa Code.

5. Where the personal data in the application file do not correspond to the data stored in the respective system, the competent visa authority shall erase the false hit from the application file.

6. Where the automatic comparison referred to in Article 9a(14) reports a hit, the competent visa authority shall assess the security, illegal immigration or high epidemic risk and take it into account in the examination of a visa application pursuant to Article 21 of the Visa Code. In no circumstances may the competent visa authority take a decision automatically on the basis of a hit based on specific risk indicators. The competent visa authority shall individually assess the security, illegal immigration and high epidemic risks in all cases.

Article 9d

Manual verification of hits by Member States' VIS designated authorities

1. Each Member States shall designate an authority (hereinafter "the VIS designated authority") for the purpose of the manual verification and follow-up of hits pursuant to point (a)(iv) to (vii), point (e), point (f) and point (g)(ii) of Article 9a(4). Member States may designate more than one authority as the VIS designated authority. Member States shall notify the name of the VIS designated authority pursuant to this paragraph to the Commission and eu-LISA.

   Where Member States choose to designate the SIRENE Bureau as the VIS designated authority, they shall allocate sufficient additional resources to enable the SIRENE Bureau to fulfil the tasks entrusted to the VIS designated authority under this Regulation

2. The VIS designated authority shall be operational at least during regular working hours. It shall have temporary access to the data recorded in the application file and the data in the SIS, ECRIS-TCN, TDAWN or the Europol data that triggered the hit, for the duration of the verifications referred to in this Article and Article g.

3. The VIS designated authority shall verify, within two working days from the notification sent by the VIS, whether the identity of the applicant recorded in the application file corresponds to the data present in the one of the consulted databases.

4. Where the personal data in the application file do not correspond to the data stored in the respective system, the VIS designated authority shall erase the record that further verifications are needed from the application file.

Article 9e

Manual verification and follow up of hits in the ETIAS watchlist

1. The ETIAS National Unit of the Member State which entered the data in the ETIAS watchlist or, if the data was entered by Europol, the ETIAS National Unit of the Member State processing the application shall manually verify and follow-up on hits pursuant to point (c)(ii) of paragraph 4 of Article 9a.

2. The respective ETIAS National Unit shall verify, within two working days from the notification sent by the VIS, whether the data recorded in the application file corresponds to the data present in the watchlist referred to in Article 34 of Regulation 2018/1240.

3. Where the data in the application file corresponds to the data stored in the watchlist, the ETIAS National Unit shall provide a reasoned opinion to the central visa authority of the Member State processing the visa application on whether the applicant poses a risk to public security, which shall be taken into account in the examination of the visa application pursuant to Article 21 of the Visa Code.

4. Where the data was entered into the ETIAS watchlist by Europol, the ETIAS National Unit of the Member State processing the application shall, for the purpose of drafting its reasoned opinion, request without delay the opinion of Europol. For that purpose, the ETIAS National Unit shall send the data recorded in the application file in accordance with Article 9(4) to Europol. Europol shall reply within 60 hours of the date of the request. The absence of a reply within that deadline shall mean that there are no grounds for objecting to the issuing of the visa.

5. The ETIAS National Unit shall send the reasoned opinion to the central visa authority within seven calendar days from the notification sent by the VIS. The absence of a reply within that deadline shall mean that there are no grounds for objecting to the issuing of the visa.

6. The reasoned opinion shall be recorded in the application file in a manner that the opinion would only be accessible to the central visa authority of the Member State processing the visa application.

7. Where the data in the application file do not correspond to the data stored in the watchlist, the ETIAS National Unit shall inform central visa authority of the Member State processing the visa application which shall erase the record that further verifications are needed from the application file.

Article 9f

Follow-up of certain hits by the SIRENE Bureau

1. In the event of hits pursuant to point (a)(iii) to (vii) Article 9a(4), and after manual verification, the competent visa authority or the VIS designated authority shall notify such hits to the SIRENE Bureau of the Member State processing the application.

2. In the event of hits pursuant to point (a)(iii) of Article 9a(4), the SIRENE Bureau of the Member State that is processing the application shall:

   a) where the return decision is accompanied by an entry ban, immediately inform the issuing Member State through the exchange of supplementary information. The issuing Member State shall immediately delete the alert on return and enter an alert for refusal of entry and stay pursuant to point (b) of Article 24(1) of Regulation (EU) 2018/1861;

   b) where the return decision is not accompanied by an entry ban, immediately inform the issuing Member State through the exchange of supplementary information, in order that the issuing Member State delete the alert on return without delay.

3. In the event of of hits pursuant to point (a)(iv) to (vii) of Article 9a(4), the SIRENE Bureau of the Member State that is processing the application shall take any appropriate follow-up action in accordance with Regulation (EU) No 2018/1862.

Article 9g

Follow-up of certain hits by VIS designated authorities

1. In the event of verified hits pursuant to point (e), point (f) or point (g)(ii) of Article 9a(4), the VIS designated authority shall, if needed, take any appropriate follow-up action. For that purpose, it shall consult, where appropriate, and respectively, with the Interpol National Central Bureau of the Member State processing the application, with Europol or with the central authority of the convicting Member State designated in accordance with Article 3(1) of Council Framework Decision 2009/315/JHA.

2. The VIS designated authority shall provide a reasoned opinion on whether the applicant poses a threat to public security to the central visa authority of the Member State which is processing the visa application, which shall be taken it into account in the examination of the visa application pursuant to Article 21 of the Visa Code.

3. In the event of verified hits pursuant to point (e) of Article 9a(4), where the conviction was handed down prior to the start of operations of ECRIS-TCN in accordance with Article 35(4) of Regulation (EU) 2019/816, the VIS designated authority shall, in the reasoned opinion referred to in paragraph 2, not take account of convictions for terrorist offences handed down more than 25 years before the date of the application or of convictions for other serious criminal offences handed down more than 15 years before the date of the application.

4. Where a hit manually verified by the VIS designated authority concerns the Europol data referred to in point (f) of Article 9a(4), the VIS designated authority shall request without delay the opinion of Europol in order to carry out its task referred to in paragraph 2. For that purpose, the VIS designated authority shall send the data recorded in the application file in accordance with Article 9(4), (5) and (6) to Europol. Europol shall reply within 60 hours of the date of the request. The absence of a reply within that deadline shall mean that there are no grounds for objecting to the issuing of the visa.

5. In the event of verified hits pursuant to point (a)(iv) of Article 9a(4), the VIS designated authority of the Member State that is processing the application, after consulting with the SIRENE bureau of the Member State issuing the alert, shall provide a reasoned opinion on whether the applicant poses a threat to public security to the central visa authority which is processing the visa application, which shall be taken into account in the examination of the visa application pursuant to Article 21 of the Visa Code.

6. The reasoned opinion shall be recorded in the application file in a manner that the opinion would only be accessible to the VIS designated authority referred to in Article 9d of the Member State processing the application and to the central visa authority of the same Member State.

7. The VIS designated authority shall send the reasoned opinion to the central visa authority within seven calendar days from the notification sent by the VIS. In the event of verified hits pursuant to point (e) of Article 9a(4), the deadline for sending the reasoned opinion shall be ten calendar days. The absence of a reply within that deadline shall mean that there are no grounds for objecting to the issuing of the visa.

Article 9h

Implementation and Manual

1. For the purpose of implementing the provisions set out in Articles 9a to 9g, eu-LISA shall, in cooperation with the Member States and Europol, establish appropriate channels for the notifications and exchange of information referred to in those Articles.

2. The Commission shall adopt a delegated act in accordance with Article 48a to lay down in a manual the procedures and rules necessary for these queries, verifications and assessments.

Article 9i

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.

Article 9j

Specific risk indicators

1. The specific risk indicators shall be an algorithm enabling profiling as defined in point 4 of Article 4 of Regulation (EU) 2016/679 through the comparison in accordance with Article 9a(14) of this Regulation of the data recorded in an application file of the VIS with specific risk indicators established by the ETIAS Central Unit under paragraph 4 of this Article pointing to security, illegal immigration or high epidemic risks. The ETIAS Central Unit shall register the specific risk indicators in the VIS.

2. The Commission shall adopt a delegated act in accordance with Article 48a to further define the risks related to security or illegal immigration or a high epidemic risk on the basis of:

(a) statistics generated by the EES indicating abnormal rates of overstaying and refusals of entry for a specific group of visa holders;

(b) statistics generated by VIS in accordance with Article 45a indicating abnormal rates of refusals of visa applications due to a security, illegal immigration or high epidemic risk associated with a specific group of visa holders;

(c) statistics generated by VIS in accordance with Article 45a and the EES indicating correlations between information collected through the application form and overstaying by visa holders 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 overstaying and refusals of entry for a specific group of visa holders 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 ECDC and disease outbreaks reported by the WHO.

3. The Commission shall, by means of an implementing act, specify the risks, as defined in this Regulation and in the delegated act referred to in paragraph 2 of this Article, on which the specific risks indicators referred to in paragraph 4 of this Article shall be based. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 49(2).

The specific risks shall be reviewed at least every six months and, where necessary, a new implementing act shall be adopted by the Commission in accordance with the examination procedure referred to in Article 49(2).

4. Based on the specific risks determined in accordance with paragraph 3, the ETIAS Central Unit shall establish a set of specific risk indicators 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 (job group).

5. 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 colour, race, ethnic or social origin, genetic features, language, political or any other opinion, religion or philosophical belief, trade union membership, membership of a national minority, property, birth, disability or sexual orientation.

6. The specific risk indicators shall be defined, established, assessed ex ante, implemented, evaluated ex post, revised and deleted by the ETIAS Central Unit after consultation of the VIS Screening Board.

Article 9k

VIS Screening Board

1. A VIS Screening Board with an advisory function is hereby established within the European Border and Coast Guard Agency. It shall be composed of a representative of the central visa authority of each Member State, of the European Border and Coast Guard Agency and of Europol.

2. The VIS Screening Board shall be consulted by the ETIAS Central Unit on the definition, establishment, assessment ex ante, implementation, evaluation ex post, revision and deletion of the specific risk indicators referred to in Article 9j.

3. The VIS Screening Board shall issue opinions, guidelines, recommendations and best practices for the purposes referred to in paragraph 2. When issuing recommendations, the VIS Screening Board shall take into consideration the recommendations issued by the VIS Fundamental Rights Guidance Board.

4. The VIS Screening Board shall meet whenever necessary, and at least twice a year. The costs and servicing of its meetings shall be borne by the European Border and Coast Guard Agency.

5. The VIS Screening Board may consult the VIS Fundamental Rights Guidance Board on specific issues related to fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination.

6. The VIS Screening Board shall adopt rules of procedure at its first meeting by a simple majority of its members.

Article 9l

VIS Fundamental Rights Guidance Board

1. An independent VIS Fundamental Rights Guidance Board with an advisory and appraisal function is hereby established. Without prejudice to their respective competences and independence, it shall be composed of the Fundamental Rights Officer of the European Border and Coast Guard Agency, a representative of the consultative forum on fundamental rights of the European Border and Coast Guard Agency, a representative of the European Data Protection Supervisor, a representative of the European Data Protection Board established by Regulation (EU) 2016/679 and a representative of the European Union Agency for Fundamental Rights.

2. The VIS Fundamental Rights Guidance Board shall perform regular appraisals and issue recommendations to the VIS Screening Board on the impact on fundamental rights of the processing of applications and of the implementation of Article 9j, in particular with regard to privacy, personal data protection and non-discrimination.

   The VIS Fundamental Rights Guidance Board shall also support the VIS Screening Board in the execution of its tasks when consulted by the latter on specific issues related to fundamental rights, in particular with regard to privacy, personal data protection and non-discrimination.

   The VIS Fundamental Rights Guidance Board shall have access to the audits referred to in point (e) of Article 7(2) of Regulation (EU) 2018/1240.

3. The VIS Fundamental Rights Guidance Board shall meet whenever necessary, and at least twice a year. The costs and servicing of its meetings shall be borne by the European Border and Coast Guard Agency. Its meetings shall take place in premises of the European Border and Coast Guard Agency. The secretariat of its meetings shall be provided by the European Border and Coast Guard Agency. The VIS Fundamental Rights Guidance Board shall adopt rules of procedure at its first meeting by a simple majority of its members.

4. One representative of the VIS Fundamental Rights Guidance Board shall be invited to attend the meetings of the VIS Screening Board in an advisory capacity. The members of the VIS Fundamental Rights Guidance Board shall have access to the information and files of the VIS Screening Board.

5. The VIS Fundamental Rights Guidance Board shall produce an annual report. The report shall be made publicly available.".

(16) Point (f) of Article 10(1) is replaced by the following:

"(f) the territory in which the visa holder is entitled to travel, in accordance with Article 24 and 25 of Regulation (EC) 810/2009;"

(17) Article 11 is deleted.

(18) The following subpoint (iia) of point (a) of Article 12(2) is inserted:

"(iia) does not provide the justification for the purpose and conditions of the intended airport transit;"

(19) In Paragraph 2 of Article 12 after point (d) the following sentence is inserted:

"The numbering of refusal grounds in the VIS shall correspond to the numbering of refusal grounds in the standard refusal form set out in Annex VI to Regulation (EC) 810/2009."

(20) 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 and the grounds for that decision. Such notification shall be generated automatically by the central system and transmitted via VISMail in accordance with Article 16.";

(21) Article 15 is amended as follows:

(a) Paragraph 1 is replaced by the folllowing:

"1. The competent visa authority shall consult the VIS for the purposes of the examination of applications and the decisions relating to those applications, including the decision whether to annul, revoke, or extend the visa in accordance with the relevant provisions. That consultation of the VIS shall establish:

- whether the applicant has been subject to a decision to issue, refuse, annul, revoke or extend a visa; and

- whether the applicant has been subject to a decision to issue, withdraw, refuse, annul, revoke, renew or extend a long-stay visa or residence permit.";

(b) Point (c) of Article 15(2) is replaced by the following:

"(c) the type and number of the travel document, the date of expiry of the validity of the travel document, the country which issued the travel document and its date of issue;";

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

"ea) facial image;";

(d) Point (f) of Article 15(2) is replaced by the following:

"(f) the number of the visa sticker, long-stay visa or residence permit and the date of issue of any previous visa, long-stay visa or residence permit;";

(e) 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.”;

(f) Paragraph 3 of Article 15 is replaced by the following:

"3. If the search with one or several of the data listed in paragraph 2 indicates that data on the applicant are recorded in the VIS, the competent visa authority shall be given access to the application file(s) and the linked application file(s) pursuant to Article 8(3) and (4) and Article 22a(4), solely for the purposes referred to in paragraph 1.";

(22) Article 16 is replaced by the following:

"1. For the purposes of consultation between central visa authorities on applications according to Article 22 of Regulation (EC) 810/2009, the consultation request and the responses thereto shall be transmitted in accordance with paragraph 2 of this Article.

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 by VISMail 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 by VISMail that response to the Member State which created the application.

In case of a negative response, the response shall specify whether the applicant poses a threat to public policy, internal security, public health and/or international relations.

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, shall be integrated into the VIS. The VIS shall provide the functionality for the centralised management of this list."

3. The transmission of information by VIS Mail shall also apply to:

(a) the transmission of information on visas issued to nationals of specific countries or to specific categories of such nationals ("ex-post notification") pursuant to Article 31 of Regulation (EC) No 810/2009;

(b) the transmission of information on visas issued with limited territorial validity pursuant to Article 25(4) of Regulation (EC) No 810/2009;

(c) the transmission of information on decisions to annul and revoke a visa and the grounds for that decision pursuant to Article 13(4);

(d) the transmission of requests for data amendments or deletion pursuant to Article 24(2) and Article 25(2) as well as contacts between Member States pursuant to Article 38(2);

(e) 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 documents supporting the application and to the transmission of electronic copies of those documents.

3a. The list of Member States requiring that their central authorities be informed of visas issued by other Member States to nationals of specific countries or to specific categories of such nationals, pursuant to Article 31 of Regulation (EC) No 810/2009 shall be integrated into the VIS. The VIS shall provide for the centralised management of the list.

3b. The transmission of information pursuant to points (a), (b) and (c) of paragraph 3 shall be automatically generated by the VIS.

3c. The competent visa authorities shall respond to requests pursuant to point (e) of paragraph 3 within three working days.

4. The personal data transmitted pursuant to this Article shall be used solely for the consultation and information of central visa authorities and consular cooperation.";

(23) Article 17 is deleted;

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

"ACCESS TO VISA DATA BY OTHER AUTHORITIES"

(25) In Article 17a, point (e) of paragraph 3 is replaced by the following:

"(e) verify, where the identity of a visa holder is verified using fingerprints or facial image, the identity of a visa holder with fingerprints or the facial image taken live against the VIS, in accordance with Articles 23(2) and 23 (4) of Regulation (EU) 2017/2226 and Article 18(6) of this Regulation. Only facial images recorded in the VIS with the indication that the facial image was taken live upon submission of the application shall be used for that comparison.";

(26) In Article 17a, the new paragraph 3a is inserted:

"3a. Interoperability shall enable the VIS to launch the process of deletion of the facial image referred to in point (d) of Article 16(1) of Regulation (EU) 2017/2226 from the individual file of EES where a facial image is recorded in the VIS with the indication that it was taken live upon submission of the application.";

(27) In Article 17a, the new paragraph 3b is inserted:

"3b. Interoperability shall enable the EES to automatically notify the VIS in accordance with Article 23(3) of this Regulation where the exit of a child below the age of 12 is entered in the entry/exit record in accordance with Article 16(3) of Regulation (EU) 2017/2226.";

(28) Article 18 is amended as follows:

(a) in paragraph 4, point (b), the word "photographs" is replaced by the words "facial images";

(b) in paragraph 5, point (b), the word "photographs" is replaced by the words "facial images";

(c) paragraph 6 is replaced by the following:

"6. In addition to the consultation carried out under paragraph 1 of this Article, the competent authority for carrying out checks at borders at which the EES is operated shall verify the identity of a person against the VIS if the search with the data listed in paragraph 1 of this Article indicates that data on the person are recorded in the VIS and one of the following conditions is met:

(a) the identity of the person cannot be verified against the EES in accordance with Article 23(2) of Regulation (EU) 2017/2226, because:

(i) the visa holder is not yet registered into the EES;

(ii) the identity is verified, at the border crossing point concerned, using fingerprints or the facial image taken live in accordance with Article 23(2) of Regulation (EU) 2017/2226;

(iii) there are doubts as to the identity of the visa holder;

(iv) of any other reason;

(b) the identity of the person can be verified against the EES but Article 23(5) of Regulation (EU) 2017/2226 applies.

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

(d) paragraph 7 is replaced by the following:

"7. For the purpose of verifying the fingerprints or facial image against the VIS as provided for in paragraph 6, the competent authority may launch a search from the EES to the VIS.";

(29) Article 19 is amended as follows:

(a) the last sub-paragraph of paragraph 1 is replaced by the following:

"Where the identity of the holder of the long-stay visa or residence permit cannot be verified with fingerprints, the competent authorities may also carry out the verification with the facial image.";

(b) point (b) in paragraph 2 is replaced by the following

"facial images";

(30) In Article 19a, paragraph 4 is replaced by the following:

"4. In addition, if the search with the data referred to in paragraph 2 indicates that data concerning the third-country national are recorded in the VIS, the competent authority for carrying out checks at borders at which the EES is operated shall verify the fingerprints or the facial image of the third-country national against the fingerprints or the facial image taken live recorded in the VIS. That authority may launch the verification from the EES. For third-country nationals whose fingerprints or facial image cannot be used, the search shall be carried out only with the alphanumeric data provided for in paragraph 2.";

(31) Paragraph 1 of Article 20 is replaced by the following:

"1. Solely for the purposes of the identification of any person who may have been registered previously in the VIS or who may not, or may no longer, fulfil the conditions for the entry to, or stay or residence on, the territory of the Member States, the authorities competent for carrying out checks at borders at which the EES is operated or within the territory of the Member States as to whether the conditions for entry to, or stay or residence on, the territory of the Member States are fulfilled, shall have access to search in the VIS with the fingerprints of that person.

Where the fingerprints of that person cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 9(4)(a), (aa), (b), (c) and/or (ca) and/or Article 9(5). However, the facial image shall not be the only search criterion.";

(32) Point (c) and (d) in paragraph 2 of Article 20 are replaced by the following:

"(c) facial images;

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

(33) Article 21 is replaced by the following:

"*Article 21*

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 Articles 12 and 34 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 with the data referred to in Article 9(4)(a), (aa), (b), (c) and/or (ca) and/or Article 9(5). However, the facial image shall not be the only search criterion.

2. If the search with the data listed in paragraph 1 indicates that a visa issued with an expiry date of no more than six months before the date of the asylum for international protection, and/or a visa extended to an expiry date of no more than six months before the date of the application for international protection, 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 (e) of the spouse and children, pursuant to Article 8(4), for the sole purpose referred to in paragraph 1:

   (a) the application number and the authority that issued or extended the visa, and whether the authority issued it on behalf of another Member State;

   (b) the data taken from the application form referred to in Article 9(4)(a) and (aa);

   (c) facial images;

   (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 Article 9(4)(a) and (aa) 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 34(6) of Regulation (EU) No 604/2013.";

(34) Article 22 is replaced by the following:

"*Article 22*

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 34 of Regulation (EU) No 604/2013 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 with the data referred to in Article 9(4)(a), (aa), (b), (c) and/or (ca) and/or Article 9(5). However, the facial image shall not be the only search criterion.

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), and, as regards the data listed in point (e) of the spouse and children, pursuant to Article 8(4), 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 point (4) of Article 9;

(c) facial images, referred to in point (5) of Article 9;

(ca) scans of the biographic data page of the travel document, referred to in point (7) of Article 9;

(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) of Article 9 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 34(6) of Regulation (EU) No 604/2013.";

(35) 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 application for a long stay visa or residence permit

1. Upon application for a long stay visa or residence permit, the authority competent for collecting or examining the application shall create without delay an application file, by entering the following data in the VIS as far as those data are required to be provided by the applicant in accordance with the relevant Union and/or national law:

(a) application number;

(b) status information, indicating that a long stay visa or residence permit has been requested;

(c) the authority with which the application has been lodged, including its location;

(d) surname (family name); first name(s); date of birth; current nationality or nationalities; sex; place of birth;

(e) type and number of the travel document;

(f) the date of expiry of the validity of the travel document;

(g) the country which issued the travel document and its date of issue;

(h) a scan of the biographic data page of the travel document;

(i) in the case of minors, surname and first name(s) of the applicant's parental authority or legal guardian;

(j) the facial image of the applicant, with an indication if the facial image was taken live upon submission of the application;

(k) fingerprints of the applicant.

2. Only fingerprints referred to in paragraph 1(k) of children of 6 years of age or older may be entered into the VIS.

The data of minors referred to in paragraph 1(j) and (k) may only be entered in the VIS if the following conditions are met:

(a) the staff taking the data of a minor have been trained specifically to take a minor's biometric data in a child-friendly and child-sensitive manner and in full respect of the best interests of the child and the safeguards laid down in the United Nations Convention on the Rights of the Child;

(b) every minor is accompanied by an adult family member or legal guardian when the data is taken;

(c) no force is used to to take the data.

3. Upon creation of the application file, the VIS shall automatically launch the queries pursuant to Article 22b.

4. If the holder has applied as part of a group or with a family member, the authority shall create an application file for each person in the group and link the files of the persons having applied together for the long stay visa or residence permit.

5. 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 and/or national law and the cases where they cannot be provided factually.

Article 22b

Queries to systems

1. The application files shall be automatically processed by the VIS to identify hit(s) in accordance with this Article. The VIS shall examine each application file individually.

2. 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 and for the purpose of the objective referred to in point (f) of Article 2(2) of this Regulation, the VIS shall launch a query by using the European Search Portal established by Article 6(1) of Regulation (EU) 2019/817 to compare the relevant data referred to in points (d), (e), (f), (g), (i), (j) and (k) of Article 22a(1) of this Regulation to the data present in a record, file or alert registered in:

– 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 34 of Regulation (EU) 2018/1240,

– the Visa Information System (VIS),

– the ECRIS-TCN system,

– the Europol data,

– the Interpol Stolen and Lost Travel Document database (SLTD), and

– the Interpol Travel Documents Associated with Notices database (Interpol TDAWN).

The comparison shall be made with both alphanumeric and biometric data, unless the database or system concerned contains only one of those data categories.

3. In particular, the VIS shall verify:

(a) as regards the SIS, whether

(i) the travel document used for the application corresponds to a travel document which has been lost, stolen, misappropriated or invalidated;

(ii) the applicant is subject to an alert for refusal of entry and stay;

(iii) the applicant is subject to an alert on return;

(iv) the applicant is subject to an alert on persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant, or wanted for arrest for extradition purposes;

(v) the applicant is subject to an alert on missing or vulnerable persons who need to be prevented from travelling;

(vi) the applicant is subject to an alert on persons sought to assist with a judicial procedure;

(vii) the applicant or his travel document is subject to an alert on persons or objects for discreet checks, inquiry checks or specific checks;

(b) as regards the EES, whether the applicant is recorded as having been refused entry in the EES on the basis of a reason corresponding to point B, D, H or I of Part B of Annex V to Regulation (EU) 2016/399;

(c) as regards the ETIAS, whether

(i) the applicant is a person for whom refused, revoked or annulled travel authorisation is recorded in the ETIAS on the basis of a reason corresponding to point (a), (b), (d) or (e) of Article 37(1) or to Article 37(2) of Regulation (EU) 2018/1240 or whether his/her travel document corresponds to such issued, refused, revoked or annulled travel authorisation;

(ii) the data provided as part of the application correspond to data present in the watchlist referred to in Article 34 of Regulation (EU) 2018/1240;

(d) as regards the VIS, whether the applicant corresponds to a person for whom a refused, revoked or annulled visa is recorded in the VIS on the basis of a reason corresponding to point (i), (v) or (vi) of point (a) or point (b) of Article 12(2) of this Regulation or for whom a refused, withdrawn, revoked or annulled long-stay visa or residence permit is recorded in the VIS on the basis of a reason corresponding to point (a) of Article 22d(1) of this Regulation or whether his/her travel document corresponds to such refused, withdrawn, revoked or annulled visa, long-stay visa or residence permit;

(e) as regards the ECRIS-TCN, whether the applicant corresponds to a person whose data have been recorded in that database over the previous 25 years, as far as convictions for terrorist offences are concerned, or over the previous 15 years, as far as other serious criminal offences are concerned;

(f) as regards Europol data, whether the data provided in the application correspond to data recorded in Europol data;

(g) as regards Interpol data, whether

(i) the travel document used for the application corresponds to a travel document reported lost, stolen or invalidated in the Interpol's SLTD;

(ii) the travel document used for the application corresponds to a travel document recorded in a file in Interpol's TDAWN.

4. SIS alerts in respect of missing or vulnerable persons, persons sought to assist with a judicial procedure and persons or objects for discreet checks, inquiry checks or specific checks shall be queried only for the objective referred to in Article 2(2)(f) of this Regulation.

5. As regards Interpol data referred to in point (g) of paragraph 3~~a~~, any queries and verification shall be performed in such a way that no information shall be revealed to the owner of the Interpol alert.

6. If the implementation of Paragraph 5 is not ensured, VIS shall not query Interpol's databases.

7. As regards Europol data referred to in point (f) of paragraph 3, the automated processing shall receive the appropriate notification in accordance with Article 21(1b) of Regulation (EU) 2016/794.

8. A hit shall be triggered where all or some of the data from the application file used for the query correspond fully or partially to the data present in a record, alert or file of the information systems referred to in paragraph 2. The manual referred to in paragraph 16 shall define partial correspondence, including a degree of probability to limit the number of false hits.

9. Where the automatic comparison referred to in paragraph 2 reports a hit related to subpoints (i) to (iii) of point (a), point (b), subpoint (i) of point (c), point (d), subpoint (i) of point (g) of paragraph 3, the VIS shall add a reference in the application file to any hit and, where relevant, the Member State(s) that entered or supplied the data having triggered the hit.

10. Where the automatic comparison referred to in paragraph 2 reports a hit related to subpoint (iv) of point (a), subpoint (ii) of point (c), point (e), point (f) and subpoint (ii) of point (g) of paragraph 3, the VIS shall only record in the application file that further verifications are needed.

In the event of hits pursuant to subpoint (iv) of point (a), point (e), point (f) and subpoint (ii) of point (g) of paragraph 3, the VIS shall send an automated notification regarding such hits to the VIS designated authority of the Member State processing the application. This automated notification shall contain the data recorded in the application file in accordance with points (d), (e), (f), (g), (i), (j) and (k) of Article 22a(1).

In the event of hits pursuant to subpoint (ii) of point (c) of paragraph 3, the VIS shall send an automated notification regarding such hits to the ETIAS National Unit of the Member State that entered the data or, if the data was entered by Europol, to the ETIAS National Unit of the Member States processing the application. This automated notification shall contain the data recorded in the application file in accordance with points (d), (e), (f), (g) and (i) of Article 22a(1).

11. Where the automatic comparison referred to in paragraph 2 reports a hit related to subpoints (v) to (vii) of point (a) of paragraph 3, the VIS shall neither record the hit in the application file, nor shall it record in the application file that further verifications are needed.

12. The unique reference number of the data record having triggered a hit shall be kept in the application file for the purpose of keeping of logs, reporting and statistics in accordance with Articles 34 and 45a.

13. Any hit pursuant to paragraph 7 shall be manually verified by the competent visa or immigration authority of the Member State processing the application for a long-stay visa or residence permit.

For this purpose, the competent authority shall have access to the application file and any linked application files, to the hits triggered during the automated processing pursuant to paragraph 7.

They shall also have temporary access to data in the EES, ETIAS, SIS, VIS or SLTD that triggered the hit for the duration of the verifications referred to in this Article and the examination of the application for a long-stay visa or residence permit and in the event of an appeal procedure.

The competent authority shall verify whether the identity of the applicant recorded in the application file corresponds to the data present in one of the consulted databases.

Where the personal data in the application file correspond to the data stored in the respective system, the hit shall be taken into account when assessing whether the applicant for a long-stay visa or a residence permit could pose a threat to the public policy, or internal security or public health of the Member States.

Where this hit concerns a person in respect of whom an alert for refusal of entry and stay or an alert on return has been issued in the SIS by another Member State, the prior consultation pursuant to Article 27 of Regulation 2018/1861 or Article 9 of Regulation 2018/1860 shall apply.

Where the personal data in the application file do not correspond to the data stored in the respective system, the competent authority shall erase the false hit from the application file.

14. For the manual verification of hits pursuant to point (a)(iv) to (vii), point (e), point (f) and point (g)(ii) of paragraph 3 by VIS designated authorities, Articles 9d shall apply accordingly.

15. For the manual verification and follow-up of hits in the ETIAS watchlist pursuant to point (c)(ii) of paragraph 3 by ETIAS National Units, Articles 9e shall apply accordingly.

The reference to the central visa authority shall be understood as referring to the visa or immigration authority competent for long-stay visas or residence permits.

16. For the follow-up of hits in the SIS pursuant to point (a)(iv) to (vii) of paragraph 3 by the SIRENE Bureaus, Article 9f shall apply accordingly.

17. For the follow-up of hits pursuant to point (e), point (f) or point (g)(ii) of paragraph 3 by the VIS designated authorities, Articles 9g shall apply accordingly.

The reference to the central visa authority shall be understood as referring to the visa or immigration authority competent for long-stay visas or residence permits.

18. For the purpose of implementing the provisions set out in this Article, eu-LISA shall, in cooperation with the Member States and Europol, establish appropriate channels for the notifications and exchange of information referred to in this Article.

19. The Commission shall adopt a delegated act in accordance with Article 48a to lay down in a manual the procedures and rules necessary for these queries, verifications and assessments.

Article 22c

Data to be added for a long stay visa or residence permit issued

Where a decision has been taken to issue a long stay visa or residence permit, the competent authority that issued the long stay visa or residence permit shall add the following data to the application file where the data is collected in accordance with the relevant Union and/or national law:

(a) status information indicating that a long-stay visa or residence permit has been issued;

(b) the authority that took the decision;

(c) place and date of the decision to issue the long-stay visa or residence permit;

(d) the type of document issued (long-stay visa or residence permit);

(e) the number of the issued long-stay visa or residence permit;

(f) the commencement and expiry dates of the validity of the long-stay visa or residence permit;

(g) data listed in Article 22a(1), if available and not entered to the application file upon application for a long-stay visa or residence permit.

Article 22d

Data to be added in certain cases of a long stay visa or residence permit refusal

1. 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 add the following data to the application file where the data is collected in accordance with the relevant Union and/or national law:

   (a) status 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;

   (b) the authority that took the decision;

   (c) place and date of the decision to refuse the long stay-visa or residence permit.

2. Where a final decision has been taken to refuse a long-stay visa or a residence permit on the basis of other reasons than the ones referred to in paragraph 1, the application file shall be deleted without delay from the VIS.

Article 22e

Data to be added for a long stay visa or residence permit withdrawn, revoked or annuled

1. Where a decision has been taken to withdraw, revoke or annul a long-stay visa or residence permit, the authority that has taken the decision shall add the following data to the application file, where the data is collected in accordance with the relevant Union and/or national law:

(a) status information indicating that the long-stay visa or residence permit has been withdrawn, revoked or annuled;

(b) the authority that took the decision;

(c) place and date of the decision.

2. The application file shall also indicate the ground(s) for withdrawal, revocation or annulment of the long-stay visa or residence permit, in accordance with Article 22d.

Article 22f

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

Where a decision has been taken to extend the validity of a long-stay visa, the authority which extended it shall add the following data to the individual file, where the data is collected in accordance with the relevant Union and/or national law:

(a) status information indicating that the validity of the long-stay visa has been extended;

(b) the authority that took the decision;

(c) place and date of the decision;

(d) the number of the visa sticker;

(e) the commencement and the expiry date of the validity of the long-stay visa.

Where a decision has been taken to renew a residence permit, Article 22c applies.

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 holder of the long-stay visa or residence permit and/or the authenticity and the validity of the long-stay visa or residence permit or whether the conditions for entry to the territory of the Member States in accordance with Article 6 of Regulation (EU) 2016/399 are fulfilled, the competent authorities for carrying out checks at external border crossing points in accordance with that Regulation shall have access to search using the following data:

   (a) surname (family name), first name or names (given names); date of birth; nationality or nationalities; sex; type and number of the travel document or documents; three letter code of the issuing country of the travel document or documents; and the date of expiry of the validity of the travel document or documents; or

   (b) the number of the long-stay visa or residence permit.

2. If the search with the data listed in paragraph 1 indicates that data on the holder of the long-stay visa or residence permit are recorded in the VIS, the competent border control authority shall be given access to consult the following data of the application file as well as of linked application 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, revoked, annuled, renewed or extended;

   (b) data referred to in Article 22c(d), (e), and (f);

   (c) where applicable, data referred to in Article 22f (d) and (e);

   (d) facial images as referred to in Article 22a(1)(j).

3. For the purposes referred to in paragraph 1, the competent authorities for carrying out checks at external border crossing points shall also have access to verify the fingerprints or the facial image of the holder of the long-stay visa or residence permit against the fingerprints or the facial image taken live recorded in the VIS.

4. Where verification of the holder of the long-stay visa or residence permit fails or where there are doubts as to the identity of the holder or the authenticity of the long-stay visa or residence permit or travel document, the duly authorised staff of the competent authorities for carrying out checks at external border crossing points shall have access to data in accordance with Article 22i (1) and (2).

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/or the authenticity and the validity of the long-stay visa or residence permit and/or whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, 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 shall have access to search with the number of the long-stay visa or residence permit in combination with verification of fingerprints of the holder of the long-stay visa or residence permit, or the number of the long-stay visa or residence permit.

   Where the identity of the holder of the long-stay visa or residence permit cannot be verified with fingerprints, the competent authorities may also carry out the verification with the facial image.

2. If the search with the data listed in paragraph 1 indicates that data on the holder of the long-stay visa or residence permit are recorded in the VIS, the competent authority shall be given access to consult the following data of the application file as well as of linked application 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, revoked, annulled, renewed or extended;

(b) data referred to in Article 22c(d), (e), and (f);

(c) where applicable, data referred to in Article 22f(d) and (e);

(d) facial images as referred to in Article 22a(1)(j).

3. Where verification of the holder of the long-stay visa or residence permit fails or where there are doubts as to the identity of the holder, the authenticity of the long-stay visa or residence permit and/or the travel document, the duly authorised staff of the competent authorities shall have access to data in accordance with Article 22i (1) and (2).

Article 22i

Access to data for identification

1. Solely for the purposes of the identification of any person who may have been registered previously in the VIS or who may not, or may no longer, fulfil the conditions for the entry to, or stay or residence on, the territory of the Member States, the authorities competent for carrying out checks at external border crossing points in accordance with Regulation (EU) 2016/399 or within the territory of the Member States as to whether the conditions for entry to, or stay or residence on, the territory of the Member States are fulfilled, shall have access to search in the VIS with the fingerprints of that person.

Where the fingerprints of that person cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 22a(1)(d), (e), (f) and/or (g) and/or (j). However, the facial image shall not be the only search criterion.

2. If the search with the data listed in paragraph 1 indicates that data on the applicant are recorded in the VIS, the competent authority shall be given access to consult the following data of the application file and the linked application file(s), pursuant to Article 22a(4), solely for the purposes referred to in paragraph 1:

(a) the application number, the status information and the authority to which the application was lodged;

(b) the data referred to in Article 22a(1)(d), (e), (f), (g) and (i);

(c) facial images;

(d) the data entered in respect of any long-stay visa or residence permit issued, refused, withdrawn, revoked, annulled, extended or renewed referred to in Articles 22c to 22f.

3. Where the person holds a long-stay visa or residence permit, the competent authorities shall access the VIS first in accordance with Articles 22g or 22h.

Article 22j

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 and 34 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 with the data referred to in Article 22a(1)(d), (e), (f), (g) and/or (j). The facial image shall not be the only search criterion.

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 application number and the authority that issued, annuled, revoked, renewed or extended the long-stay visa or residence permit;

(b) the data referred to in Article 22a(1)(d), (e), (f) and (g);

(c) the data entered in respect of any long-stay visa or residence permit issued, withdrawn, revoked, annulled, extended or renewed, referred to in Articles 22c, 22e and 22f;

(d) facial images as referred to in Article 22a(1)(j);

(e) the data referred to in Article 22a(1)(d), (e), (f) and (g) 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 34(6) of Regulation (EU) No 604/2013 of the European Parliament and of the Council.

Article 22k

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 34 of Regulation (EU) No 604/2013 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 with the data referred to in Article 22a(1)(d), (e), (f), (g) and/or (j). The facial image shall not be the only search criterion.

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, as regards the data listed in point (f) of the spouse and children, pursuant to Article 22a(4), for the sole purpose referred to in paragraph 1:

   a) the application number;

   b) the data referred to in Article 22a(1)(d), (e), (f) and (g);

   c) facial images, referred to in Article 22a(1)(j);

   d) scans of the biographic data page of the travel document, referred to in Article 22a(1)(h);

   e) the data entered in respect of any long-stay visa or residence permit issued, withdrawn, revoked, annulled, extended or renewed, referred to in Articles 22c, 22e and 22f;

   f) the data referred to in Article 22a(1)(d), (e), (f) and (g) 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 34(6) of Regulation (EU) No 604/2013.

CHAPTER IIIb

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

Article 22l

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.

   The data accessed by those authorities shall only be processed for the purposes of the specific case for which the data have been consulted.

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 22o are fulfilled.

   The designated authorities 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 22n and 22o.

Article 22m

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.

   The data accessed by Europol shall only be processed for the purposes of the specific case for which the data have been consulted.

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 22r 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 22n

Procedure for access to the VIS for law enforcement purposes

1. The operating units referred to in Article 22l(5) shall submit a reasoned electronic or written request to the central access points referred to in Article 22l(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 22o 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 22l(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 22o 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 without delay erase the information accessed from the VIS and shall inform the central access points of the erasure.

Article 22o

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

1. Without prejudice to Article 22 of Regulation (EU) 2019/817 designated authorities shall have access to the VIS for the purpose of consultation where 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) a query to the CIR was launched in accordance with Article 22 of Regulation 2019/817, and the reply received as referred to in paragraph 2 of that Article indicates 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**,** or the data category with which the search is conducted is not stored in the CIR.

3. Consultation of the VIS shall be limited to searching with any of the following data in the application 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, the country which issued the travel document 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. The facial image referred to in point (e) of paragraph 3 shall not be the only search criterion.

5. Consultation of the VIS shall, in the event of a hit, give access to the data listed in paragraph 3 of this Article as well as to any other data taken from the application file, including data entered in respect of any document issued, refused, annulled, revoked, withdrawn, renewed or extended. Access to the data referred to in point (4)(l) 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.

6. By way of derogation from paragraphs 3 and 4 the data referrred to in paragraph 3(d) and (e) of children under the age of 14 may only be used to search the VIS and in the case of a hit be accessed if:

(a) it is necessary for the purpose of the prevention, detection or investigation of serious crimes of which those children are the victim of and to protect missing children;

(b) access is necessary in a specific case;

(c) the use of their data is in the best interest of the child.

Article 22p

Access to VIS for identification of persons in specific circumstances

By derogation from Article 22o(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)**,** (b), (c) and (ca) of Article 9 (4) or points (d), (e), (f) and (g) of Article 22a(1).

Consultation of the VIS shall, in the event of a hit, give access to any of the data in Article 9 and Article 22a, as well as to the data in linked application files in accordance with Article 8(3) and (4) or Article 22a(4).

Article 22q

Use of VIS data for the purpose of entering SIS alerts on missing persons or vulnerable persons who need to be prevented from travelling and the subsequent access to those data

1. Data stored in the VIS may be used for the purpose of entering an alert on missing persons or vulnerable persons who need to be prevented from travelling in accordance with Article 32 of Regulation (EU) 2018/1862. In those cases, the central access point referred to in Article 22l(3) shall ensure the transmission of data via secured means.

2. In case of a hit against a SIS alert through the use of data stored in the VIS as referred to in paragraph 1, child protection authorities and national judicial authorities may request an authority with access to the VIS to grant them access to those data for the purpose of their tasks. Such national judicial authorities shall include those responsible for the initiation of public prosecutions in criminal proceedings and for judicial inquiries prior to charging a person, and their coordinating authorities, as referred to in Article 44(3) of Regulation (EU) 2018/1862. The conditions provided for in Union and national law shall apply. Member States shall ensure that the data are transmitted in a secure manner.

Article 22r

Procedure and conditions for access to VIS data by Europol

1. Europol shall have access to the VIS for the purpose of consultation where all of 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) a query to the CIR was launched in accordance with Article 22 of Regulation 2019/817, and the reply received as referred to in paragraph 2 of that Article indicates 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, or the data category with which the search is conducted is not stored in the CIR.

3. Consultation of the VIS shall be limited to searching with any of the following data in the application 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, the country which issued the travel document 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. The facial image referred to in point (e) of paragraph 2a shall not be the only search criterion.

5. Consultation of the VIS shall, in the event of a hit, give access to the data listed in paragraph 2a of this Article as well as to any other data taken from the application file, including data entered in respect of any document issued, refused, annulled, revoked, withdrawn, renewed or extended. Access to the data referred to in point (4)(l) 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.

6. By way of derogation from paragraphs 2a and 2c the data referred to in paragraph 2a(d) and (e) of children under the age of 14 may only be used to search the VIS and in the case of a hit be accessed if:

   (a) it is necessary for the purpose of the prevention, detection or investigation of serious crimes of which those children are the victim of and to protect missing children;

   (b) access is necessary in a specific case;

   (c) the use of their data is in the best interest of the child.

7. 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 22m(2). 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 Europol designated authority referred to in Article 22m(1) in such a way as not to compromise the security of the data.

8. 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 22s

Keeping of logs for requests for data consultation in order to prevent, detect and investigate terrorist offences or other serious criminal offences

1. eu-LISA shall keep logs of all data processing operations within the VIS involving access by the central access points referred to in Article 22l(3) for the purposes of Chapter IIIb. Those logs shall show the date and time of each operation, the data used for launching the search, the data transmitted by the VIS and the name of the authorised staff of the central access points entering and retrieving the data.

2. In addition, each Member State and Europol shall keep logs of all data processing operations within the VIS resulting from requests for consultation of data or from access to data stored in the VIS for the purposes of Chapter IIIb.

3. The logs referred to in paragraph 2 shall show:

   (a) the exact purpose of the request for consultation of or access to data stored in the VIS, including the terrorist offence or other serious criminal offence concerned and, for Europol, the exact purpose of the request for ~~access~~ consultation;

   (b) the decision taken with regard to the admissibility of the request;

   (c) the national file reference;

   (d) the date and exact time of the request for access made by the central access point to the VIS;

   (e) where applicable, the use of the urgency procedure referred to in Article 22n(2) and the outcome of the ex post verification;

   (f) which of the data or set of data referred to in Article 22o(3) have been used for consultation; and

   (g) in accordance with national rules or with Regulation (EU) 2016/794, the identifying mark of the official who carried out the search and of the official who ordered the search or transmission of data.

4. The logs referred to in paragraphs 1 and 2 of this Article shall be used only to check the admissibility of the request, monitor the lawfulness of data processing and to ensure data integrity and security. The logs shall be protected by appropriate measures against unauthorised access. They shall be deleted one year after the retention period referred to in Article 23 has expired, if they are not required for monitoring procedures which have already begun. The European Data Protection Supervisor and the competent supervisory authorities responsible for monitoring the lawfulness of the data processing and data integrity and security shall have access to the logs at their request for the purpose of fulfilling their duties. The authority responsible for checking the admissibility of the request shall also have access to the logs for that purpose. Other than for such purposes, personal data shall be erased in all national and Europol files after a period of one month, unless those data are required for the purposes of the specific ongoing criminal investigation for which they were requested by a Member State or by Europol. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 50.

Article 22t

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 22o(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 22o(1).".

(36) Article 23 is replaced by the following:

"*Article 23*

Retention period for data storage

1. Each application 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 or renewed;

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

(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, 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 22a(4).

3. By way of derogation from paragraph 1, fingerprints and facial images pertaining to children below the age of 12 shall be deleted upon the visa, long-stay visa or residence permit having expired and, in the event of a visa, the child having exited the external borders.

For the purpose of that deletion, the EES shall automatically notify the VIS when the exit of the child is entered in the entry/exit record in accordance with Article 16(3) of Regulation (EU) 2017/2226.";

(37) in Article 24, paragraphs 2 and 3 are 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 by VISMail 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(4), or where a link is missing the responsible Member State shall make the necessary verifications and provide an answer within three working days, 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.

3. The Member State responsible shall, as soon as possible, check the data concerned and, if necessary, correct or delete them immediately.";

(38) 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 and the links referred to in Article 8(3) and (4) and in Article 22a(4) 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) paragraph 2, is replaced by the following:

"2. Each Member State shall inform the Member State(s) responsible without delay if an applicant has acquired its nationality. Such message shall be transmitted by the VISMail.";

(39) Article 26 is amended as follows:

(a) paragraphs 1 to 3 are replaced by the following:

"1. eu-LISA shall be responsible for the technical and operational management of the VIS and its components as set out in Article 2a. It shall ensure, in cooperation with the Member States, that at all times the best available technology, subject to a cost-benefit analysis, is used for those components.

2. eu-LISA shall also be responsible for the following tasks relating to the communication infrastructure between the VIS Central System and the national uniform interfaces:

(a) supervision;

(b) security;

(c) the coordination of relations between the Member States and the provider;

(d) tasks relating to implementation of the budget;

(e) acquisition and renewal;

(f) contractual matters.

3. Operational management of the VIS shall consist of all the tasks necessary to keep the VIS functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the VIS functions at a satisfactory level of operational quality, in particular as regards the response time for consultation of the VIS by visa authorities, the authorities competent to decide on an application for a long-stay visa or residence permit and border authorities. Such response times shall be as short as possible.";

(b) paragraphs 3a to 8 are deleted;

(40) Article 26, is amended as follows:

(a) the following paragraph 8a is inserted:

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

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

(b) for testing new technologies and techniques relevant to enhance the performance of the VIS 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. Real personal data adopted for testing shall be rendered anonymous in such a way that the data-subject is no longer identifiable.";

(b) the following paragraph is added:

"9a. Where eu-LISA cooperates with external contractors in any VIS-related tasks, it shall closely monitor the activities of the contractor to ensure compliance with this Regulation, in particular on security, confidentiality and data protection.";

(41) Article 27 is deleted.

(42) The following Article is inserted:

"*Article 27a*

Interoperability with other EU information systems and Europol data

Interoperability between the VIS and the EES, the ETIAS, the SIS, the Eurodac, the ECRIS-TCN and Europol data shall be established to enable the automated processing of the queries to other systems referred to in Articles 9a to 9g and 22b. Interoperability shall rely on the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 and Article 6 of Regulation (EU) 2019/818.";

(43) Article 28 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The VIS shall be connected to the national system of each Member State via the national uniform interface in the Member State concerned.";

(b) paragraph 2 is replaced by the following:

"2. Each Member State shall designate a national authority, which shall provide the access of the competent authorities referred to in Article 6(1) and (2) to the VIS, and connect that national authority to the national uniform interface.";

(c) in paragraph 4 points (a) and (d) are replaced by the following:

"(a) the development of the national system and/or its adaptation to the VIS;";

"(d) bearing the costs incurred by the national system and the costs of their connection to the national uniform interface, including the investment and operational costs of the communication infrastructure between the national uniform interface and the national system.";

(44) 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) paragraph 2 is replaced by the following:

"2. eu-LISA shall ensure that the VIS is operated in accordance with this Regulation and its implementing rules referred to in Article 45. In particular, eu-LISA shall:

(a) take the necessary measures to ensure the security of the VIS Central System and the communication infrastructure between the VIS Central System and the national uniform interfaces, without prejudice to the responsibilities of each Member State;

(b) ensure that only duly authorised staff have access to data processed in the VIS for the performance of the tasks of eu-LISA in accordance with this Regulation.";

(d) the following paragraph 2a is inserted:

"2a. eu-LISA shall develop and maintain a mechanism and procedures for carrying out quality checks on the data in the VIS and shall provide regular reports to the Member States. eu-LISA shall provide a regular report to the European Parliament, the Council and the Commission covering the issues encountered. The Commission shall, by means of implementing acts, lay down and develop that mechanism, the procedures and the appropriate requirements for data quality compliance. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).";

(e) paragraph 3 is replaced by the following:

"3. eu-LISA shall inform the European Parliament, the Council and the Commission of the measures which it takes pursuant to paragraph 2.";

(f) the following paragraph is added:

"3a. In relation to the processing of personal data in VIS, each Member State shall designate the authority which is to be considered as controller in accordance with point (7) of Article 4 of Regulation (EU) 2016/679 and which shall have central responsibility for the processing of data by that Member State. Each Member State shall notify the Commission of the designation.";

(45) the following Article 29a is inserted:

"Article 29a

Specific rules for entering data

1. Entering data referred to in Article 6(4), Articles 9 to 14, 22a, and 22c to 22f into the VIS shall be subject to the following conditions:

(a) data pursuant to Article 6(4), Articles 9 to 14, 22a, and 22c to 22f may only be entered to the VIS following a quality check performed by the responsible national authorities;

(b) data pursuant to Article 6(4), Articles 9 to 14, 22a, and 22c to 22f 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 or updating application files in VIS, quality checks shall be performed on the data referred to in Articles 9 to 14, 22a, and 22c to 22f; should these checks fail to meet the established quality criteria, the responsible authority(ies) shall be automatically notified by the VIS. The automated queries pursuant to Article 9a(3) and 22b(2) may be triggered by the VIS only following a quality check;

(b) quality checks on facial images and fingerprints shall be performed when creating or updating application files in VIS, to ascertain the fulfilment of minimum data quality standards allowing for biometric matching;

(c) 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).";

(46) Article 31 is replaced by the following:

"1. Data processed in the VIS pursuant to this Regulation shall not be transferred or made available to a third country or to an international organisation with the exception of transfers to Interpol for the purpose of carrying out the queries referred to in point (g) of Article 9a(4) and in point (g) of Article 22b(3) of this Regulation. Transfers of personal data to Interpol are subject to the provisions of Chapter V of Regulation (EU) 2018/1725 and Chapter V of Regulation (EU) 2016/679.

2. By way of derogation from paragraph 1 of this Article, the data referred to in either Article 9(4)(a) to (ca), (k) and (m) and Article 9(6) and 9(7) or Article 22a(1) points (d) to (i) and (k) may be accessed by the competent authorities and transferred or made available to a third country or to an international organisation listed in the Annex, provided that this is necessary in individual cases in order to prove the identity of third-country nationals for the purpose of return in accordance with Directive 2008/115/EC, or, as regards transfers to an international organisation listed in the Annex, for the purpose of resettlement in accordance with European or national resettlement schemes, and provided that one of the following conditions is satisfied:

(a) the Commission has adopted a decision on the adequate level of protection of personal data in that third country or international organisation in accordance with Article 45(3) of Regulation (EU) 2016/679;

(b) appropriate safeguards have been provided as referred to in Article 46 of Regulation (EU) 2016/679 have been provided, such as through a readmission agreement which is in force between the Union or a Member State and the third country in question;

(c) point (d) of Article 49(1) of Regulation (EU) 2016/679 applies.

Moreover, the data referred to in the first subparagraph shall be transferred only where all of the following conditions are satisfied:

(a) the transfer of the data is carried out in accordance with the relevant provisions of Union law, in particular provisions on data protection, readmission agreements, and the national law of the Member State transferring the data;

(b) the Member State which entered the data in the VIS has given its approval;

(c) the third country or international organisation has agreed to process the data only for the purposes for which they were provided;

Subject to the first and second subparagraphs, where a return decision adopted pursuant to Directive 2008/115/EC has been issued in relation to a third-country national, data referred to in the first subparagraph shall be transferred only where the enforcement of such a return decision is not suspended and provided that no appeal has been lodged which may lead to the suspension of its enforcement.

3. Transfers of personal data to third countries or to international organisations pursuant to paragraph 2 shall not prejudice the rights of applicants for and beneficiaries of international protection, in particular as regards non-refoulement.

4. Personal data obtained from the VIS by a Member State or by Europol for law enforcement purposes shall not be transferred or made available to any third country, international organisation or private entity established in or outside the Union. The prohibition shall also apply where those data are further processed at national level or between Member States pursuant to Directive (EU) 2016/680.

5. By way of derogation from paragraph 3a, the data referred to in points (a) to (ca) of Article 9(4) and in points (d) to (g) of Article 22a(1) may be transferred by the designated authority to a third country in individual cases, only where all of the following conditions are met:

(a) there is an exceptional case of urgency where there is:

(i) an imminent danger associated with a terrorist offence; or

(ii) an imminent danger to the life of a person and that danger is associated with a serious criminal offence;

(b) the transfer of data is necessary for the prevention, detection or investigation in the territory of the Member States or in the third country concerned of such a terrorist offence or serious criminal offence;

(c) the designated authority has access to such data in accordance with the procedure and the conditions set out in Articles 22n and 22o;

(d) the transfer is carried out in accordance with the applicable conditions set out in Directive (EU) 2016/680, in particular Chapter V thereof;

(e) a duly motivated written or electronic request from the third country has been submitted;

(f) the reciprocal provision of any information in visa information systems held by the requesting country to the Member States operating the VIS is ensured.

Where a transfer is made pursuant to the first subparagraph of this paragraph, such a transfer shall be documented and the documentation shall, on request, be made available to the supervisory authority established in accordance with Article 41(1) of Directive (EU) 2016/680, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred.";

(47) in Article 32, paragraph 2 is amended as follows:

(a) the following point is inserted:

"(ea) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment;";

(b) the following points are inserted:

"(ja) ensure that, in the event of an interruption, installed systems can be restored to normal operation;

(jb) ensure reliability by making sure that any faults in the functioning of the systems are properly reported and that the necessary technical measures are put in place to ensure that personal data can be restored in the event of corruption due to a malfunctioning of the systems;";

(48) in Article 32, paragraph 3 is amended as follows:

3. eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 2 as regards the operation of the VIS, including the adoption of a security plan.

(49) the following Article is inserted:

"*Article 32a*

Security incidents

1. Any event that has or may have an impact on the security of the VIS and may cause damage or loss to the data stored in the VIS shall be considered to be a security incident, in particular where unauthorised access to data may have occurred or where the availability, integrity and confidentiality of data has or may have been compromised.

2. Security incidents shall be managed so as to ensure a quick, effective and proper response.

3. Without prejudice to the notification and communication of a personal data breach pursuant to Article 33 of Regulation (EU) 2016/679, Article 30 of Directive (EU) 2016/680, or both, Member States shall notify the Commission, eu-LISA and the European Data Protection Supervisor of security incidents. In the event of a security incident in relation to the VIS Central System, eu-LISA shall notify the Commission and the European Data Protection Supervisor. Europol and the EBCGA shall notify the Commission and the European Data Protection Supervisor in the case of a VIS-related security incident.

4. Information regarding a security incident that has or may have an impact on the operation of the VIS or on the availability, integrity and confidentiality of the data stored in the VIS shall be provided to the Commission and, if affected, to Member States, to Europol and the EBCGA. Such incidents shall also be reported in compliance with the incident management plan to be provided by eu-LISA.

5. Member States, the European Border and Coast Guard Agency, eu-LISA and Europol shall cooperate in the event of a security incident.

6. The Commission shall inform the European Parliament and the Council without delay of serious incidents and the measures taken to address them. This information shall be classified, where appropriate, as EU RESTRICTED/ RESTREINT UE in accordance with applicable security rules.";

(50) Article 33 is replaced by the following:

"*Article 33*

Liability

1. Without prejudice to the right to compensation from, and liability of the controller or processor under Regulation (EU) 2016/679, Directive (EU) 2016/680 and Regulation (EU) 2018/1725:

(a) any person or Member State that has suffered material or non-material damage as a result of an unlawful personal data processing operation or any other act incompatible with this Regulation by a Member State shall be entitled to receive compensation from that Member State;

(b) any person or Member State that has suffered material or non-material damage as a result of an act of a Union institution, body, office or agency incompatible with this Regulation shall be entitled to receive compensation from that Union institution, body, office or agency.

That Member State or Union institution, body, office or agency shall be exempted from their liability under the first subparagraph, in whole or in part, if they prove that they are not responsible for the event which gave rise to the damage.

2. If any failure of a Member State to comply with its obligations under this Regulation causes damage to the VIS, that Member State shall be held liable for such damage, unless and insofar as eu-LISA or another Member State participating in the VIS failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the national law of that Member State. Claims for compensation against a Union institution, body, office or agency for the damage referred to in paragraphs 1 and 2 shall be subject to the conditions provided for in the Treaties.";

(51) Article 34 is replaced by the following:

"*Article 34*

Keeping of logs

1. Each Member State, the European Border and Coast Guard Agency and eu-LISA shall keep logs of all their data processing operations within the VIS. These logs shall show:

(a) the purpose of access,

(b) the date and time,

(c) the type of data entered,

(d) the type of data used for search, and

(e) 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 queries and consultations referred to in Articles 9a to 9g and 22b, a log for each data processing operation carried out within the VIS and, respectively, the EES, the ETIAS, the SIS, the ECRIS-TCN and the Eurodac shall be kept in accordance with this Article and, respectively, Article 46(2) of Regulation (EU) 2017/2226, Article 69 of Regulation (EU) 2018/1240, Article 18a of Regulation (EU) 2018/1861, Article 18a of Regulation (EU) 2018/1862, Article 31a of Regulation (EU) 2019/816 and Article 28a of Regulation (EU) 603/2013.

3. For the operations listed in Article 45c a log of each data processing operation carried out within the VIS and the EES shall be kept in accordance with that Article and Article 46 of the Regulation (EU) 2226/2017 . For the operations listed in Article 17a, a record of each data processing operation carried out in VIS and the EES shall be kept in accordance with this Article and Article 46 of Regulation (EU) 2017/2226.

4. 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 modification and shall be deleted after a period of one year after the retention period referred to in Article 23 has expired, if they are not required for monitoring procedures which have already begun.";

(52) Article 36 is replaced by the following:

"*Article 36*

Penalties

Without prejudice to Regulation (EU) 2016/679 and Directive (EU) 2016/680, Member States shall lay down the rules on penalties applicable to infringements of this Regulation, including for processing of personal data carried out in breach of this Regulation, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.";

(53) The following Article 36a is inserted:

"*Article 36a*

Data protection

1. Regulation (EU) No 2018/1725 shall apply to the processing of personal data by the European Border and Coast Guard Agency and eu-LISA.

2. Regulation (EU) 2016/679 shall apply to the processing of personal data by the visa, border, asylum and immigration authorities when performing tasks under this Regulation.

3. Directive (EU) 2016/680 shall apply to the processing of personal data stored in the VIS including the access to those data, by Member States' designated authorities under Chapter IIIb and for the purposes referred to in that Chapter.

4. The processing of personal data by Europol pursuant to this Regulation shall be carried out in accordance with Regulation (EU) 2016/794.";

(54) Article 37 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory sentence is replaced by the following:

"1. Without prejudice to the right to information referred to in Articles 15 and 16 of Regulation (EU) 2018/1725, Articles 13 and 14 of Regulation (EU) 2016/679, and Article 13 of Directive (EU) 2016/680, applicants and the persons referred to in Articles 9(4)(f) shall be informed of the following by the Member State responsible:";

(ii) point (a) is replaced by the following:

"(a) the identity of the controller referred to in Article 29(3a), including his contact details;";

(iii) point (c) is replaced by the following:

"(c) the categories of recipients of the data, including the authorities referred to in Article 22l and Europol;";

(iv) the following point is inserted:

"(ca) the fact that the VIS may be accessed by the Member States and Europol for law enforcement purposes;";

(v) the following point is inserted:

"(ea) the fact that personal data stored in the VIS may be transferred to a third country or an international organisation in accordance with Article 31 and to Member States in accordance with Council Decision (EU) 2017/1908*;

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* Council Decision (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provisions 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).";

(vi) point (f) is replaced by the following:

"(f) the existence of the right to request access to data relating to them, the right to request that inaccurate data relating to them be rectified, that incomplete personal data relating to them be completed, that unlawfully processed personal data concerning them be erased or that the processing thereof be restricted, as well as the right to receive information on the procedures for exercising those rights, including the contact details of the supervisory authorities, or of the European Data Protection Supervisor if applicable, which shall hear complaints concerning the protection of personal data;";

(b) paragraph 2 is replaced by the following:

"2. The information referred to in paragraph 1 shall be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language in writing to the applicant when the data, the facial image and the fingerprint data as referred to in Article 9 and Article 22a are collected. Children must be informed in an age-appropriate manner, including by using visual tools 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.”;

(55) Article 38 is replaced by the following:

"*Article 38*

Right of access to, of rectification, of completion, of erasure of personal data and of restriction of processing

1. In order to exercise their rights under Articles 15 to 18 of Regulation (EU) 2016/679, any person shall have the right to obtain communication of the data relating to him recorded in the VIS and of the Member State which transmitted them to the VIS. The Member State that receives the request shall examine and reply to it as soon as possible, and at the latest within one month of receipt of the request.

2. Any person may request that data relating to him which are inaccurate be rectified and that data recorded unlawfully be erased.

Where the request is addressed to the Member State responsible and where it is found that the data stored in the VIS are factually inaccurate or have been recorded unlawfully, the Member State responsible shall, in accordance with Article 24(3), rectify or erase those data in the VIS without delay and at the latest within one month of receipt of the request. The Member State responsible shall confirm in writing to the person concerned without delay that it has taken action to rectify or erase data relating to him.

Where the request is addressed to a Member State other than the Member State responsible, the authorities of the Member State to which the request was addressed shall contact the authorities of the Member State responsible within a period of seven days. The Member State responsible shall proceed in accordance with the previous sub-paragraph. The Member State which contacted the authority of the Member State responsible shall inform the persons concerned that their request was forwarded, to which Member State and about the further procedure.

3. Where the Member State responsible does not agree with the claim that data recorded in the VIS are factually inaccurate or have been recorded unlawfully, it shall adopt without delay an administrative decision explaining in writing to the person concerned why it is not prepared to rectify or erase data relating to him or her.

4. That decision shall also provide the person concerned with information explaining the possibility to challenge the decision taken in respect of the request referred to in paragraph 2 and, where relevant, information on how to bring an action or a complaint before the competent authorities or courts and any assistance available to the person, including from the competent national supervisory authorities.

5. Any request made pursuant to paragraph 1 or 2 shall contain the necessary information to identify the person concerned. That information shall be used exclusively to enable the exercise of the rights referred to in paragraph 1 or 2.

6. The Member State responsible shall keep a record in the form of a written document that a request referred to in paragraph 1 or 2 was made and how it was addressed. It shall make that document available to the competent national data protection supervisory authorities without delay, and not later than seven days following the decision to rectify or erase data referred to in the second subparagraph of paragraph 2 or following the decision referred to in paragraph 3 respectively.

7. By way of derogation from paragraphs 1 to 6 of this Article, and only as regards data contained in the reasoned opinions that are recorded in the VIS in accordance with Articles 9e(6), 9g(6) and Article 22b(15) and (17) as a result of the queries referred to in Articles 9a and 22b, a Member State shall take a decision not to provide information to the person concerned, in whole or in part, in accordance with national or Union law, to the extent that, and for as long as such a partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the person concerned, in order to:

(a) avoid obstructing official or legal inquiries, investigations or procedures;

(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;

(c) protect public security;

(d) protect national security; or

(e) protect the rights and freedoms of others.

In cases referred to in the first subparagraph, the Member State shall inform the person concerned in writing, without undue delay, of any refusal or restriction of access and of the reasons for the refusal or restriction. Such information may be omitted where its provision would undermine any of the reasons set out in points (a) to (e) of the first subparagraph. The Member State shall inform the person concerned of the possibility of lodging a complaint with a supervisory authority or of seeking a judicial remedy.

The Member State shall document the factual or legal reasons on which the decision not to provide information to the person concerned is based. That information shall be made available to the supervisory authorities.

For such cases, the person concerned shall also be able to exercise his or her rights through the competent supervisory authorities.";

(56) Article 39 is replaced by the following:

"*Article 39*

Cooperation to ensure the rights on data protection

1. The competent authorities of the Member States shall cooperate actively to enforce the rights laid down in Article 38.

2. In each Member State, the supervisory authority referred to in Article 51(1) of Regulation (EU) 2016/679 shall, upon request, assist and advise the data subject in exercising his or her right to rectify, complete or erase personal data relating to him or her or to restrict the processing of such data in accordance with Regulation (EU) 2016/679.

In order to achieve the aims referred to in the first subparagraph, the supervisory authority of the Member State responsible which transmitted the data and the supervisory authority of the Member State to which the request has been made shall cooperate with each other.";

(57) Article 40 is replaced by the following:

"*Article 40*

Remedies

1. Without prejudice to Articles 77 and 79 of Regulation (EU) 2016/679, in each Member State any person shall have the right to bring an action or a complaint before the competent authorities or courts of that Member State which refused the right of access to, or right of rectification, completion or erasure of data relating to him or her provided for in Article 38 and Article 39(2) of this Regulation. The right to bring such an action or complaint shall also apply in cases where requests for access, rectification, completion or erasure were not responded to within the deadlines provided for in Article 38 or were never dealt with by the data controller.

2. The assistance of the supervisory authority referred to in Article 51(1) of Regulation (EU) 2016/679 shall remain available throughout the proceedings.";

(58) Article 41 is replaced by the following:

"*Article 41*

Supervision by the National Supervisory Authority

1. Each Member State shall ensure that the supervisory authority referred to in Article 51(1) of Regulation (EU) 2016/679 independently monitors the lawfulness of the processing of personal data pursuant to this Regulation by the Member State concerned.

2. The supervisory authority referred to in Article 41(1) of Directive (EU) 2016/680 shall monitor the lawfulness of the processing of personal data by the Member States in accordance with Chapter IIIb, including the access to personal data by the Member States and their transmission to and from VIS.

3. The supervisory authority or authorities referred to in Article 51(1) of Regulation (EU) 2016/679 shall ensure that an audit of the data processing operations by the responsible national authorities is carried out in accordance with relevant international auditing standards at least every four years. The results of the audit may be taken into account in the evaluations conducted under the mechanism established by Council Regulation (EU) No 1053/2013. The supervisory authority referred to in Article 51(1) of Regulation (EU) 2016/679 shall publish annually the number of requests for rectification, completion or erasure, or restriction of processing of data, the action subsequently taken and the number of rectifications, completions, erasures and restrictions of processing made in response to requests by the persons concerned.

4. Member States shall ensure that their supervisory authorities referred to in Article 51(1) of Regulation (EU) 2016/679 and Article 41(1) of Directive 2016/680 have sufficient resources to fulfil the tasks entrusted to them under this Regulation and have access to advice from persons with sufficient knowledge of biometric data.

5. Member States shall supply any information requested by the supervisory authority referred to in Article 51(1) of Regulation (EU) 2016/679 or the supervisory authority referred to in Article 41(1) of Directive (EU) 1026/680 and shall, in particular, provide it with information on the activities carried out in accordance with its responsibilities as laid down in this Regulation. Member States shall grant the supervisory authority referred to in Article 51(1) of Regulation (EU) 2016/679 and the supervisory authority referred to in Article 41(1) of Directive (EU) 1026/680 access to their logs and allow it access at all times to all their VIS related premises.";

(59) Article 42 is replaced by the following:

"*Article 42*

Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall be responsible for monitoring the personal data processing activities of eu-LISA, Europol and the European Border and Coast Guard Agency under this Regulation and for ensuring that such activities are carried out in accordance with this Regulation and Regulation (EU) 2018/1725 or, as regards Europol, with Regulation (EU) 2016/794.

2. The European Data Protection Supervisor shall ensure that an audit of eu-LISA's personal data processing activities is carried out in accordance with relevant international auditing standards at least every four years. A report of that audit shall be sent to the European Parliament, the Council, eu-LISA, the Commission and the national supervisory authorities. eu-LISA shall be given an opportunity to make comments before the reports are adopted.

3. eu-LISA shall supply information requested by the European Data Protection Supervisor, give the European Data Protection Supervisor access to all documents and to its logs referred to in Articles 22s, 34 and 45c and allow the European Data Protection Supervisor access to all its premises at any time.";

(60) Article 43 is replaced by the following:

"*Article 43*

Cooperation between National Supervisory Authorities and the European Data Protection Supervisor

1. The supervisory authorities and the European Data Protection Supervisor shall, each acting within the scope of their respective competences, cooperate actively within the framework of their respective responsibilities to ensure coordinated supervision of the VIS and the national systems.

2. The European Data Protection Supervisor and the supervisory authorities shall exchange relevant information, assist each other in carrying out audits and inspections, examine any difficulties concerning the interpretation or application of this Regulation, assess problems in the exercise of independent supervision or in the exercise of the rights of the data subject, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.

3. For the purpose of paragraph 2, the supervisory authorities and the European Data Protection Supervisor shall meet at least twice a year within the framework of the European Data Protection Board. The costs of those meetings shall be borne by and their organisation shall be undertaken by the European Data Protection Board. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary.

4. A joint report of activities shall be sent by the European Data Protection Board to the European Parliament, to the Council, to the Commission, to Europol, to the European Border and Coast Guard Agency and to eu-LISA every two years. That report shall include a chapter on each Member State prepared by the supervisory authority of that Member State.";

(61) Article 44 is deleted;

(62) Article 45 is replaced by the following:

"1. The Commission shall adopt implementing acts to lay down the measures necessary for the development of the VIS Central System, the national uniform interfaces in each Member State, and the communication infrastructure between the VIS Central System and the national uniform interfaces concerning the following:

(a) the design of the physical architecture of the system including its communication network;

(b) technical aspects which have a bearing on the protection of personal data;

(c) technical aspects which have serious financial implications for the budgets of the Member States or which have serious technical implications for the national systems;

(d) the development of security requirements, including biometric aspects.

2. The Commission shall adopt implementing acts to lay down measures necessary for the technical implementation of the functionalities of the VIS Central System, in particular:

(a) for entering the data and linking applications in accordance with Article 8, Articles 10 to 14, Article 22a and Articles 22c to 22f;

(b) for accessing the data in accordance with Article 15, Articles 18 to 22, Articles 22g to 22k, Articles 22n to 22r and Articles 45e and 45f;

(c) for amending, deleting and advance deleting of data in accordance with Articles 23 to 25;

(d) for keeping and accessing the logs in accordance with Article 34;

(e) for the consultation mechanism and the procedures referred to in Article 16.

(f) for accessing the data for the purposes of reporting and statistics in accordance with Article 45a.

3. The Commission shall adopt implementing acts to lay down the technical specifications for the quality, resolution and use of fingerprints and of the facial image for biometric verification and identification in the VIS.

4. The implementing acts referred to in paragraphs 1, 2 and 3 shall be adopted in accordance with the examination procedure referred to in Article 49(2).";

(63) 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, the European Asylum Support Office and the European Border and Coast Guard Agency, including the ETIAS Central Unit in accordance with Article 9j of this Regulation, shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing for individual identification and in accordance with the safeguards related to non-discrimination referred to in Article 7(2):

(a) status information;

(b) the authority with which the application has been lodged, including its location;

(c) sex, age and nationality/nationalities of the applicant;

(d) country and city of residence of the applicant, only as regards visas;

(e) current occupation (job group) of the applicant, only as regards visas;

(f) Member State(s) of first entry and destination, only as regards visas;

(g) date and place of the application and the decision concerning the application (issued, withdrawn, refused, annulled, revoked, renewed or extended);

(h) the type of document applied for or issued, i.e. whether airport transit visa, uniform or limited territorial validity visa, long stay visa or residence permit;

(i) the type of the travel document and the country which issued the travel document, only as regards visas;

(j) the decision concerning the application and, in case of refusal, withdrawal, annulment or revocation, the grounds indicated for that decision;

(k) hits resulting from queries to Union information systems, Europol data or Interpol databases pursuant to Articles 9a or 22b, differentiated by system or database, or hits against the specific risk indicators pursuant to Article 9j, and hits where, after manual verification pursuant to Articles 9c, 9d, 9e or 22b the applicant's personal data was confirmed as corresponding to the data present in one of the consulted systems or databases;

(l) decisions to refuse a visa, long-stay visa or residence permit which are correlated to a manually verified and confirmed hit in one of the consulted systems or databases or to a hit against the specific risk indicators;

(m) the competent authority, including its location, which decided on the application and the date of the decision, only as regards visas;

(n) the cases in which the same applicant applied for a visa from more than one visa authority, indicating these visa authorities, their location and the dates of decisions;

(o) the main purpose(s) of the journey, only as regards visas;

(p) visa applications processed in representation pursuant to Article 8 of Regulation (EC) No 810/2009;

(q) the data entered in respect of any document withdrawn, annulled, revoked, renewed or whose validity is extended, as applicable;

(r) the expiry date of the long stay visa or residence permit;

(s) the number of persons exempt from the requirement to give fingerprints pursuant to Article 13(7) of Regulation (EC) No 810/2009;

(t) the cases in which the data referred to in point (6) of Article 9 could factually not be provided, in accordance with Article 8(5);

(u) 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 Article 8(5);

(v) 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 Article 8(5);

(w) links to the previous application file on that applicant as well as links of the application files of the persons travelling together, only as regards visas.

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 29 and 32 of Regulation (EU) 2019/1896.

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 Regulation 2019/817. In accordance with Article 39(1) of that Regulation, cross-system statistical data and analytical reporting shall allow the authorities listed in paragraph 1 of this Article to obtain customisable reports and statistics, to support the implementation of the specific risk indicators referred to in Article 9j, to improve the assessment of the security, illegal immigration and high epidemic risks, to enhance the efficiency of border checks and to help the visa authorities to process visa applications.

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 visas showing, for each location where a visa was lodged and for each Member State, in particular:

   (a) number of airport transit (A) visas applied for; number of A visas issued, disaggregated by single airport transit and multiple airport transits; number of A visas refused;

   (b) number of short-stay (C) visas applied for (and disaggregated by the main purposes of the journey); number of C visas issued, disaggregated by issued for single entry, two entries or multiple entry and the latter divided by length of validity (6 months or below, 1 year, 2 years, 3 years, 4 years, 5 years); number of visas with limited territorial validity issued (LTV); number of C visas refused;

   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, withdrawn, revoked, annulled and extended;

(b) total of residence permits applied for, issued, refused, withdrawn, revoked, annulled and renewed.

6. At the end of each year, statistical data shall be compiled in an annual report for that year. The statistics shall contain a breakdown of data for each location and each Member State. The report shall be published and transmitted to the European Parliament, to the Council, to the Commission, to the European Border and Coast Guard Agency, to the European Data Protection Supervisor and to the national supervisory authorities.

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 and asylum policy, including on aspects pursuant to the application of Regulation (EU) No 1053/2013.";

(64) The following Article 45b is inserted:

"*Article 45b*

Notifications

1. Member States shall notify the Commission of the authority which is to be considered as controller referred to in Article 29(3a).

2. Member States shall notify the Commission and eu-LISA of the competent authorities referred to in Article 6(3) which have access to enter, amend, delete or consult data in the VIS and of the VIS designated authority as referred to in Articles 9d(1) and 22b(14).

Three months after the date of application of this Regulation, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], eu-LISA shall publish a consolidated list of those authorities in the Official Journal of the European Union. Member States shall also notify the Commission and eu-LISA of any changes of those authorities without delay. In the event of such changes, eu-LISA shall publish once a year an updated consolidated version of that information. eu-LISA shall maintain a continuously updated public website containing that information.

3. Member States shall notify the Commission and eu-LISA of their designated authorities and of their central access points referred to in Article 22l and shall notify any changes in that regard without delay.

4. The Commission shall publish the information referred to in paragraphs 1 and 3 in the Official Journal of the European Union. In the event of changes to the information, the Commission shall publish once a year an updated consolidated version of it. The Commission shall maintain a continuously updated public website containing the information.";

(65) the following Articles 45c, 45d, 45e and 45f are inserted:

"*Article 45c*

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 who are subject to a visa requirement or who are required to hold 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.

2. Secure access to the carrier gateway referred to in Article 2a, point (h), including the possibility to use mobile technical solutions, shall allow carriers to proceed with the query referred to in paragraph 1 prior to the boarding of a passenger.

   For this purpose, as regards visas, the carrier shall provide the data referred to in points (a), (b) and (c) of Article 9(4) of this Regulation and as regards long-stay visas and residence permits, the carrier shall provide the data referred to in points (d), (e) and (f) of Article 22a(1), as contained in the travel document. The carrier shall also indicate the Member State of entry or, in case of airport transit, the Member State of transit.

   By way of derogation, in the case of airport transit, the carrier shall only be obliged to send a query to the VIS where the third-country national is required to hold an airport transit visa in accordance with Article 3 of Regulation (EC) No 810/2009.

3. The VIS shall respond by indicating whether or not the person has a valid visa, long-stay visa or residence permit, as applicable, providing the carriers with an OK/NOT OK answer.

If a short-stay visa has been issued with limited territorial validity in accordance with Article 25 of Regulation (EC) No 810/2009, the response provided by VIS shall take into account the Member State(s) for which the visa is valid as well as the Member State of entry indicated by the carrier.

Carriers may store the information sent and the answer received in accordance with the applicable law. The OK/NOT OK answer shall not be regarded as a decision to authorise or refuse entry in accordance with Regulation (EU) 2016/399.

The Commission shall, by means of implementing acts, adopt detailed rules concerning the conditions for the operation of the carrier gateway and the data protection and security rules applicable. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).

4. Where third-country nationals are refused boarding due to a query to the VIS, carriers shall inform them that this refusal is due to information stored in VIS and shall provide them with information on their rights with regard to access to and rectification or erasure of personal data recorded in the VIS.

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 this Article to the duly authorised members of the carriers' staff. When setting up the authentication scheme, information security risk management and the principles of data protection by design and by default shall be taken into account. 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).

6. The carrier gateway shall make use of a separate read-only database updated on a daily basis via a one-way extraction of the minimum necessary subset of data stored in VIS. eu-LISA shall be responsible for the security of the carrier gateway, for the security of the personal data it contains and for the process of extracting the personal data into the separate read-only database.

7. By way of derogation from paragraph 1, for carriers transporting groups overland by coach the verification referred to in paragraph 1 shall, for the first 18 months following the start of application of revised VIS, as provided for in Article 9 of Regulation xxx/xxx [amending the VIS Regulation], be optional.

8. 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 forconsultation, 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.

Article 45d

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

1. Where it is technically impossible to proceed with the query referred to in Article 45c(1), because of a failure of any part of the VIS, the carriers shall be exempted of the obligation to verify the possession of a valid visa, long-stay visa or residence permit by using the carrier gateway. Where such failure is detected by eu-LISA, the ETIAS Central Unit shall notify the carriers and the Member State. It shall also notify the carriers and the Member States when the failure is remedied. Where such failure is detected by the carriers, they may notify the ETIAS Central Unit. The ETIAS Central Unit shall inform the Member States without delay about the notification of the carriers.

2. Where for other reasons than a failure of any part of VIS it is technically impossible for a carrier to proceed with the query referred to in Article 45c(1) for a prolonged period of time, that carrier shall inform the ETIAS Central Unit. The ETIAS Central Unit shall inform the Member States without delay about the notification of the carriers.

3. 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 45e

Access to VIS data by European Border and Coast Guard teams

1. To exercise the tasks and powers pursuant to Article 82(1) and (10) of Regulation (EU) 2019/1896 of the European Parliament and of the Council* 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 the VIS.

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* Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

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 45f are fulfilled.

Article 45f

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 45e, 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 45e(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 the 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 the VIS is required for performing the specific tasks entrusted to the team by the host Member State.

3. In accordance with Article 82(4) of Regulation (EU) 2019/1896, 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 acordance 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 and 22i of this Regulation.

6. Where such access and search reveal the existence of data recorded in the 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 eu-LISA 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 teams 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 teams shall be registered.

9. For the purpose of Article 45e and of this Article, 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.";

(66) Articles 46, 47 and 48 are deleted;

(67) the following Article is inserted:

"*Article 48a*

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 9, 9h(2), 9j(2) and 22b(19) shall be conferred on the Commission for a period of five years from … [date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 9, 9h(2), 9j(2) and 22b(19) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 9, 9h(2), 9j(2) and 22b(19) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.";

(68) Article 49 is replaced by the following:

"Article 49

Committee procedure

1. The Commission shall be assisted by the committee established by Article 68(1) of Regulation (EU) 2017/2226. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.

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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).";

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

(69) 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." ;

(70) Article 50 is replaced by the following:

"Article 50

Monitoring and evaluation

1. eu-LISA 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, eu-LISA 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 and costs. This report shall also contain, once the technology is in use, an evaluation of the use of facial images to identify persons, including an assessment of any difficulties encountered.

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 and for access to data on children below 14 years of age;

(d) the number and type of cases in which the urgency procedures referred to in Article 22n(2) were used, including those cases where the urgency was not accepted by the ex post verification carried out by the central access point;

(e) 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.

A technical solution shall be made available to Member States in order to facilitate the collection of those data pursuant to chapter IIIb for the purpose of generating statistics referred to in this paragraph. The Commission shall, by means of implementing acts, adopt the specifications of the technical solution. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49 (2).

5. Three years after the start of the operation of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], 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 costs sustained and an assessment of the continuing validity of the underlying rationale, and its impact on fundamental rights, 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. It shall also include a detailed analysis of the data provided in the annual reports foreseen by Article 50(4), with a view to assessing the effectiveness of access to VIS data for law enforcement purposes, as well as an assessment of whether the querying of ECRIS-TCN by the VIS has contributed to supporting the objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security. The Commission shall transmit the evaluation to the European Parliament and the Council.

6. Member States shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraph 3, 4 and 5.

7. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.";

Article 2

Repeal of Decision 2004/512/EC

Decision 2004/512/EC is repealed. References to that Decision shall be construed as references to Regulation (EC) No 767/2008 and shall be read in accordance with the correlation table in Annex 1.

Article 3

Amendments to Regulation (EU) No 810/2009

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

(1) Article 10 is amended as follows:

(a) Paragraph (1) is replaced by the following:

"1. When lodging an application, applicants shall, where required in accordance with Article 13, appear in person to provide their fingerprints or facial image. Without prejudice to the first sentence of this paragraph and to Article 45, applicants may lodge their applications electronically, where available.";

(b) point (c) of paragraph (3) is replaced by the following:

"(c) allow his facial image to be taken live in accordance with Article 13 or, where the exemptions referred to in Article 13(7a) apply, present a photograph in accordance with the standards set out in Regulation (EC) No 1683/95.";

(c) the following sentence is inserted at the end of paragraph (3):

"Without prejudice to point (c), Member States may require the applicant to present a photograph in accordance with the standards set out in Regulation (EC) No 1683/95 at every application.";

(2) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall collect biometric identifiers of the applicant comprising a facial image of him and his 10 fingerprints in accordance with the safeguards laid down in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, in the Charter of Fundamental Rights of the European Union and in the United Nations Convention on the Rights of the Child.";

(b) paragraph 2 is replaced by the following:

"2. At the time of submission of the first application and subsequently at least every 59 months thereafter, the applicant shall be required to appear in person. At that time, the following biometric identifiers of the applicant shall be collected:

- a facial image taken live at the time of the application;

- his 10 fingerprints taken flat and collected digitally.

2a. Those facial images and fingerprints shall be collected for the sole purpose of recording them in the VIS in accordance with Article 9(5) and (6) of Regulation (EC) 767/2008 and the national systems for visa processing.";

(c) paragraph 3 is replaced by the following:

"3. Where fingerprints and a live facial image 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 shall be copied to the subsequent application.

However, where there is reasonable doubt regarding the identity of the applicant, the consulate shall collect the fingerprints and facial image of that applicant within the period specified in the first subparagraph.

Furthermore, if at the time when the application is lodged, it cannot be immediately confirmed that the fingerprints were collected within the period specified in the first subparagraph, the applicant may request that they be collected.";

(d) paragraph 4 is replaced by the following:

"4. The facial image of third country nationals referred to in paragraph 2 shall have sufficient image resolution and quality to be used in automated biometric matching. The technical requirements for this facial image of the applicant referred to in paragraph 2 shall be in accordance with the international standards as set out in the International Civil Aviation Organization (ICAO) document 9303, 8th edition.";

(e) the following paragraph is inserted:

"6a. When collecting biometric identifiers of minors the following conditions shall be met:

(a) the staff taking the biometric identifiers of a minor have been trained specifically to take a minor's biometric data in a child-friendly and child-sensitive manner and in full respect of the best interests of the child and the safeguards laid down in the United Nations Convention on the Rights of the Child;

(b) every minor is accompanied by an adult family member or legal guardian when the biometric identifiers are taken;

(c) no force is used to take the biometric identifiers.";

(f) In paragraph 7, point (a) is replaced by the following:

"(a) children under the age of 6 and persons over the age of 75;";

(g) in paragraph 7 the following point is insterted:

"(e) persons who are required to appear as witness before international courts and tribunals in the territory of the Member States and their appearance in person to lodge the visa application would put them in serious danger.";

(h) the following paragraphs are inserted:

"7a. Applicants referred to in paragraph 7, points (c), (d) and (e), may also be exempt from having their facial images taken live upon submission of the application.

7b. In exceptional cases where the quality and resolution specifications set for the live enrolment of the facial image cannot be met, the facial image may be extracted electronically from the chip of the electronic Machine Readable Travel Document (eMRTD). Before extracting the data from the chip, the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain, unless this is technically impossible or impossible due to the unavailability of valid certificates. In such cases, the facial image shall only be inserted into the application file in the VIS pursuant to Article 9 of the VIS Regulation 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.";

(i) paragraph 8 is deleted;

(3) Article 21 is amended as follows:

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

"3a. For the purpose of assessing the entry conditions provided for in paragraph 3, the consulate or the central authorities shall take into account, where applicable, the result of the verifications of hits pursuant to Article 9c of Regulation (EC) No 767/2008 or the reasoned opinion provided by the VIS designated authority or the ETIAS National Unit in accordance with Articles 9e and 9g of that Regulation.

By way of derogation from Article 4(1), in the case of applications where a reasoned opinion was provided by the VIS designated authority or the ETIAS National Unit, the central authorities shall either be empowered to decide on the application themselves or shall, after assessing the reasoned opinion, inform the consulate processing the application that they object to the issuance of the visa.

3b. For the purpose of assessing the entry conditions provided for in paragraph 3, the consulate or the central authorities shall, where a red link exists in accordance with Article 32 of Regulation (EU) 2019/817, assess and take into account the differences in the linked identities.

3c. Hits against the specific risk indicators referred to in Article 9j of Regulation (EC) No 767/2008 pursuant to Article 9a(14) of that Regulation shall be taken into account in the examination of a visa application. In no circumstances may the consulate or the central authorities take a decision automatically on the basis of a hit based on specific risk indicators. The consulate or the central authorities shall individually assess the security, illegal immigration and high epidemic risks in all cases.";

(b) paragraph 4 is replaced by the following:

"4. The consulate or the central authorities shall verify, using the information obtained from the EES, in accordance with Article 24 of Regulation (EU) No 2226/2017, 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.";

(c) the following paragraph 8a is inserted:

"(8a) Consulates shall pay particular attention to the correct verification of the identity of minors and the link with the person(s) exercising parental authority or legal guardianship in order to prevent child trafficking.";

(4) Article 25, paragraph 1, point (a) is amended as follows:

(a) the following subpoint (iv) is inserted:

"(iv) to issue a visa for reasons of urgency, although the verifications of hits in accordance with Articles 9a to 9g of Regulation (EC) No 767/2008 have not been completed;";

(5) Article 35 is amended as follows:

(a) the following paragraph 5a is added:

"5a. A third-country national for whom the verifications of hits in accordance with Articles 9a to 9g of Regulation (EC) No 767/2008 have not been completed shall, in principle, not be issued a visa at the external border.

However, a visa with limited territorial validity for the territory of the issuing Member State may be issued at the external border for such persons in exceptional cases, in accordance with Article 25(1)(a).";

(6) Article 36, paragraph 3 is replaced by the following:

"3. This Article shall apply without prejudice to Article 35(3), (4), (5) and (5a).";

(7) In Article 39, paragraphs 2 and 3 are replaced by the following:

"2. Consular and central authorities' staff shall, in the performance of their duties, fully respect human dignity and the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union. Any measures taken shall be proportionate to the objectives pursued by such measures.

3. While performing their tasks, consular and central authorities' staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. They shall pay particular attention to children, the elderly and persons with a disability. The best interests of the child shall be a primary consideration.";

(8) Article 46 is deleted.

(9) Article 57 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Two years after all the provisions of this Regulation have become applicable, the Commission shall produce an evaluation of its application. This overall evaluation shall include an examination of the results achieved against objectives and of the implementation of the provisions of this Regulation.";

(b) paragraphs 3 and 4 are deleted.

(10) in Annex X, letter C, point (b), a new indent is inserted after the second one:

"- respect the provisions regarding the taking of biometrics identifiers laid down in Article 13, and"

(11) Annex XII is deleted.

Article 4

Amendments to Regulation (EU) No 2017/2226

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

(1) Article 8 is amended as follows:

(a) point (e) of paragraph (1), is replaced by the following:

"(e) where the identity of a visa holder is verified using fingerprints or facial image, verify at the borders at which the EES is operated the identity of a visa holder by comparing the fingerprints or facial image of the visa holder with the fingerprints or the facial image taken live that are recorded in the VIS, in accordance with Articles 23(2) and 23 (4) of this Regulation and Article 18(6) of Regulation (EC) No 767/2008. Only facial images recorded in the VIS with the indication that the facial image was taken live upon submission of the application shall be used for that comparison.";

(b) paragraph 3a is added:

"3a. Interoperability shall enable the deletion of the facial image referred to in point (d) of Article 16(1) from the individual file where a facial image is recorded in the VIS with the indication that it was taken live upon submission of the application.";

(c) paragraph 3b is added:

"3b. Interoperability shall enable the EES to automatically notify the VIS in accordance with Article 23(3) of Regulation (EC) No 767/2008 where the exit of a child below the age of 12 is entered in the entry/exit record in accordance with Article 16(3) of this Regulation.";

(d) the following paragraph is added:

"5. From the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the EES shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008.";

(2) 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.";

(3) 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 third-country national holding a short-stay visa issued for one or two entries has already used the number of authorised entries or whether the holder of a short-stay visa has reached the maximum duration of the authorised stay.

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.

Where third-country nationals are refused boarding due to the answer of the web service, carriers shall inform them that this refusal is due to information stored in the EES and shall provide them with information on their rights with regard to access to and rectification or erasure of personal data recorded in the EES.";

(4) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Where it is necessary to create an individual file or to update the facial image referred to in point (d) of Article 16(1), and point (b) of Article 17(1), the facial image shall be taken live. This shall not apply to third-country nationals subject to the visa requirement where a facial image is recorded in the VIS with an indication that it was taken live upon submission of the application.";

(b) paragraph 5 is deleted;

(5) Article 16 is amended as follows:

(a) point (d) of paragraph 1 is replaced by the following:

"(d) the facial image as referred to in Article 15, unless a facial image is recorded in the VIS with an indication that it was taken live upon submission of the application.";

(b) paragraph 1a is inserted:

"1a. Where, for a third-country national whose individual file contains a facial image referred to in point (d) of paragraph 1, a facial image is subsequently recorded in the VIS with an indication that it was taken live upon submission of the application, the EES shall delete the facial image from the individual file.";

(6) in Article 18(2), the following subparagraph is added:

"By way of derogation from Article 15(1) and point (d) of Article 16(1) of this Regulation, where the third-country national is refused entry on the basis of a reason corresponding to point B or D of Part B of Annex V to Regulation (EU) 2016/399 and where there are doubts regarding the authenticity of the facial image recorded in the VIS, the facial image referred to in point (a) of this paragraph shall be taken live and entered into the individual file irrespective of any facial image recorded in the VIS.";

(7) in Article 23, subparagraph 3 of paragraph 2 is replaced by the following:

"If the search in the EES with the data set out in the first subparagraph of this paragraph indicates that data on the third-country national are recorded in the EES, the border authorities shall:

(a) for third-country nationals who are not subject to a visa requirement, compare the live facial image with the facial image referred to in point (b) of Article 17(1) of this Regulation or proceed to a verification of fingerprints against the EES, and

(b) for third-country nationals subject to a visa requirement,

(i) compare the live facial image with the facial image recorded in the EES referred to in point (d) of Article 16(1) of this Regulation or with the facial image taken live recorded in the VIS in accordance with Article 9(5) of Regulation (EC) 767/2008, or

(ii) proceed to a verification of fingerprints directly against the VIS in accordance with Article 18 of Regulation (EC) No 767/2008.

For the verification of fingerprints or the facial image taken live against the VIS for visa holders, the border authorities may launch the search in the VIS directly from the EES as provided in Article 18(6) of that Regulation.";

(8) In Article 23, point (a) of subparagraph 2 of paragraph (4) is replaced by the following:

"(a) for third-country nationals who are subject to a visa requirement, if the search in the VIS with the data referred to in Article 18(1) of Regulation (EC) No 767/2008 indicates that data on the third-country national are recorded in the VIS, a verification of fingerprints or the facial image taken live against the VIS shall be carried out in accordance with Article 18(6) of Regulation (EC) No 767/2008. For this purpose, the border authority may launch a search from the EES to the VIS as provided for in Article 18(7) of Regulation (EC) No 767/2008. Where a verification of a third-country national pursuant to paragraph 2 of this Article failed, the border authorities shall access the VIS data for identification in accordance with Article 20 of Regulation (EC) No 767/2008.";

(9) in Article 24 the following paragraph is inserted:

"5. The competent visa authorities and the authorities competent to decide on an application for a long-stay visa or residence permit shall have access to the relevant data in the EES for the purpose of manually verifying the hits resulting from the queries in the EES in accordance with Article 9c and 22b of Regulation (EC) No 767/2008 as well as examining and deciding on applications.";

(10) 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 comprise verification of the identity of the holder of the long-stay visa or residence permit and the authenticity and validity 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;

(3) Annex VII, point 6, is replaced by the following:

"6.1. Border guards shall pay particular attention to minors, whether travelling accompanied or unaccompanied. Minors crossing an external border shall be subject to the same checks on entry and exit as adults, as provided for in this Regulation.

6.2. In the case of accompanied minors, the border guard shall check that the persons accompanying minors have parental care or legal guardianship over them, especially where minors are accompanied by only one adult and there are serious grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental care or legal guardianship over them. In the latter case, the border guard shall carry out a further investigation in order to detect any inconsistencies or contradictions in the information given.

6.3. In the case of minors travelling unaccompanied, border guards shall ensure, by means of thorough checks on travel documents and supporting documents, that the minors do not leave the territory against the wishes of the person(s) having parental care or legal guardianship over them.

6.4. Member States shall nominate national contact points for consultation on minors and inform the Commission thereof. A list of these national contact points shall be made available to the Member States by the Commission.

6.5. Where there is doubt as to any of the circumstances set out in points 6.1., 6.2. and 6.3., border guards shall make use of the list of national contact points for consultation on minors.

6.6. Member States shall ensure that border guards verifying biometrics of children or using them to identify a child are specifically trained to do so in a child-friendly and child-sensitive manner and in full respect of the best interests of the child and the safeguards laid down in the United Nations Convention on the Rights of the Child. When accompanied by a parent or a legal guardian this person shall accompany the child when the biometrics are verified or used for identification. No force shall be used. Member States shall ensure, where necessary, that the infrastructure at border crossing points is adapted for the use of biometrics of children.".

Article 6

Amendments to Regulation (EU) 2018/1240

Regulation (EU) 2018/1240 is amended as follows:

(1) in Article 4 the following point is inserted:

"(da) support the objectives of the VIS of facilitating the visa application procedure and contributing to the prevention of threats to the internal security of the Member States, by allowing queries in ETIAS, including the watchlist referred to in Article 34;";

(2) In Article 7(2), point (ca) is inserted :

"(ca) defining, establishing, assessing ex ante, implementing, evaluating ex post, revising and deleting the specific risk indicators as referred to in Article 9j of Regulation (EC) No 767/2008 after consultation of the VIS Screening Board;";

(3) In Article 7(2), points (e) and (h) are replaced by the following:

"(e) carrying out regular audits of the processing of applications and of the implementation of Article 33 of this Regulation and Article 9j of Regulation (EC) No 767/2008, including by regularly assessing their impact on fundamental rights, in particular with regard to privacy and personal data protection;"

"(h) notifying carriers in cases of a failure of the ETIAS Information System as referred to in Article 46(1) or of the VIS as referred to in Article 45d(1) of Regulation (EC) No 767/2008;";

(4) In Article 7(3) the following point (aa) is inserted:

"(aa) information on the functioning of the specific risk indicators for the VIS.";

(5) in Article 8(2) the following point is inserted:

"(h) manually verifying the hits in the ETIAS watchlist triggered by the automated queries carried out by the VIS in accordance with Articles 9a and 22b of Regulation (EC) No 767/2008 and following up those hits, in accordance with Article 9e of that Regulation.";

(6) the following article is inserted:

"*Article 11b*

Interoperability with the VIS

From the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the ETIAS Central System and the CIR shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008.";

(7) in Article 13 the following paragraph is inserted:

"4b. Access by visa authorities and the authorities competent to decide on an application for a long-stay visa or residence permit to the ETIAS Central System in accordance with Article 9a and Article 22b of Regulation (EC) No 767/2008 shall be limited to verifying whether the applicant for a visa, long-stay visa or residence permit or his/her travel document corresponds to an issued, refused, revoked or annulled travel authorisation in the ETIAS Central System and the reasons of such decision.";

(8) the following chapter is inserted:

"CHAPTER IXa

USE OF ETIAS BY VISA AUTHORITIES AND AUTHORITIES COMPETENT TO DECIDE ON AN APPLICATION FOR A LONG-STAY VISA OR RESIDENCE PERMIT

Article 49a

Access to data by visa authorities and authorities competent to decide on an application for a long-stay visa or residence permit

For the purpose of carrying out the verifications laid down in Articles 9c and 22b of Regulation (EC) No 767/2008, the competent visa authorities and authorities competent to decide on an application for a long-stay visa or residence permit shall have the right to access relevant data in the ETIAS Central System and the CIR.";

(9) in Article 69(1), the following point is added:

"(h) the hits triggered by the automated queries carried out by the VIS in accordance with Articles 9a and 22b of Regulation (EC) No 767/2008, the data processed by the competent visa authorities and authorities competent to decide on an application for a long-stay visa or residence permit for the purpose of manually verifying the hits in accordance with Article 9c and 22b of that Regulation, and the data processed by the ETIAS National Units in accordance with Article 9e of that Regulation.";

(10) In Article 75(1), point (d) is inserted:

"(d) the specific risk indicators referred to in Article 9j of Regulation (EC) No 767/2008.".

Article 7

Amendments to Regulation (EU) 2018/1860

Regulation (EU) 2018/1860 is amended as follows:

Article 19 is replaced by the following:

"*Article 19*

Applicability of the provisions of Regulation (EU) 2018/1861

Insofar as not established in this Regulation, the entry, processing and updating of alerts, the provisions on responsibilities of the Member States and eu-LISA, the conditions concerning access and the review period for alerts, data processing, data protection, liability and monitoring and statistics, as laid down in Articles 6 to 19, Article 20(3) and (4), Articles 21, 23, 32 and 33, Article 34(5), Article 36c and Articles 38 to 60 of Regulation (EU) 2018/1861, shall apply to data entered and processed in SIS in accordance with this Regulation.".

Article 8

Amendments to Regulation (EU) 2018/1861

Regulation (EU) 2018/1861 is amended as follows:

(1) the following article is inserted:

"*Article 18a*

Keeping of logs for the purpose of interoperability with VIS

Logs of each data processing operation carried out within SIS and VIS pursuant to Article 36c shall be kept in accordance with Article 18 of this Regulation and Article 34 of Regulation (EC) No 767/2008.";

(2) the following article is inserted:

"*Article 36c*

Interoperability with VIS

From the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the Central System of SIS shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008.".

Article 9

Amendments to Regulation (EU) 2019/817

Regulation (EU) 2019/817 on establishing a framework for interoperability between EU information systems in the field of borders and visais amended as follows:

(1) In Article 4, point 20 is replaced by the following:

"(20) 'designated authorities' means the Member State designated authorities as defined in point (26) of Article 3(1) of Regulation (EU) 2017/2226, point (3a) of Article 4 of Regulation (EC) No 767/2008, and point (21) of Article 3(1) of Regulation (EU) 2018/1240;";

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

"(b) the data referred to in Article 9(6) and Article 22a(1)(k) of Regulation (EC) No 767/2008 and in Article 9(5) and Article 22a(1)(j) of that Regulation, provided that the facial image was recorded in the VIS with the indication that it was taken live upon submission of the application;";

(3) in Article 18(1), point (b) is replaced by the following:

"(b) the data referred to in Article 9(4)(a) to (ca), Article 9(5) and (6) and Article 22a(1)(d) to (g), (j) and (k) of Regulation (EC) No 767/2008;";

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

"(b) the visa authorities and the authorities competent to decide on an application for a long-stay visa or residence permit referred to in Article 6(1) of Regulation (EC) No 767/2008 when creating or updating an application file in the VIS in accordance with that Regulation;

(ba) the VIS designated authorities referred to in Article 9d and Article 22b of Regulation (EC) No 767/2008 when manually verifying hits triggered by automated queries from the VIS to the ECRIS-TCN in accordance with that Regulation;";

(5) in Article 27(3), point (b) is replaced by the following:

"(b) surname (family name); first name or names (given name(s)); date of birth; place of birth; sex, and nationality or nationalities as referred to in Article 9(4)(a) and (aa) and in Article 22a(1)(d) of Regulation (EC) No 767/2008;";

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

"(b) the visa authorities and the authorities competent to decide on an application for a long-stay visa or residence permit referred to in Article 6(1) of Regulation (EC) No 767/2008 for matches that occurred when creating or updating an application file in VIS in accordance with that Regulation, with the exception of the cases referred to in point (ba);

(ba) the VIS designated authorities referred to in Article 9d and Article 22b of Regulation (EC) No 767/2008 only for yellow links created between data in the VIS and the ECRIS-TCN when creating or updating an application file in VIS in accordance with that Regulation;";

(7) in Article 39, paragraph 2 is replaced by the following:

"2. eu-LISA shall establish, implement and host in its technical sites the CRRS containing the data and statistics referred to in Article 63 of Regulation (EU) 2017/2226, Article 45a of Regulation (EC) No 767/2008, Article 84 of Regulation (EU) 2018/1240, Article 60 of Regulation (EU) 2018/1861 and Article 16 of Regulation (EU) 2018/1860, logically separated by EU information system. Access to the CRRS shall be granted by means of controlled, secured access and specific user profiles, solely for the purpose of reporting and statistics, to the authorities referred to in Article 63 of Regulation (EU) 2017/2226, Article 45a of Regulation (EC) No 767/2008, Article 84 of Regulation (EU) 2018/1240 and Article 60 of Regulation (EU) 2018/1861.";

(8) in Article 72 a new paragraph 1a is inserted:

"1a. Without prejudice to paragraph 1, for the purposes of the automated processing of Articles 9a and 22b of Regulation (EC) No 767/2008, the ESP shall start operations, limited to those purposes, from the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation].".

Article 10

Amendments to Regulation (EU) 2019/1896

Regulation (EU) 2019/1896 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 is amended as follows:

In Article 10(1), point (afa) is inserted:

"(afa) fulfil the tasks and obligations entrusted to the Agency under Regulation (EC) No 767/2008;".

Article 11

Repeal of Decision 2008/633/JHA

Decision 2008/633/JHA is repealed. References to Decision 2008/633/JHA 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 12

Start of operations

1. No later than 31 December 2023, the Commission shall adopt a decision by means of an implementing act setting the date on which VIS operations start pursuant to this Regulation. The Commission shall adopt that decision once the following conditions are met:

   a) the measures referred to in Article 5a(3), Article 6(5), the second subparagraph of Article 9, Article 9h(2), Articles 9j(2) and 9j(3), Article 22b(19), Article 29(2a), Article 29a(3), Article 45, Articles 45c(3) and 45c(5), Article 45d(2), Article 48a, Article 49, and Article 50(4a) of Regulation (EC) 767/2008 have been adopted;

   b) eu-LISA has notified the Commission of the successful completion of all testing activities;

   c) Member States have notified the Commission that they have made the necessary technical and legal arrangements to process data pursuant to this Regulation and have notified to the Commission and eu-LISA the information referred to in Article 45b of Regulation (EC) 767/2008;

2. The Commission shall closely monitor the process of gradual fulfilment of the conditions set out in paragraph 1 and shall inform the European Parliament and the Council about the outcome of the testing activities referred to in point (b) of that paragraph.

3. By ... [one year after the date of entry into force of the amending Regulation] and every year thereafter until the decision of the Commission referred to in paragraph 1 has been taken, the Commission shall submit a report to the European Parliament and to the Council on the state of play of preparations for the full implementation of this Regulation. That report shall contain detailed information about the costs incurred and information as to any risks which may impact the overall costs of the VIS to be borne by the general budget of the Union.

In the event of delays in the full implementation of this Regulation, the Commission shall inform the European Parliament and the Council as soon as possible about the reasons for the delays and their impact in terms of time and costs.

4. The decision referred to in paragraph 1 shall be published in the Official Journal of the European Union.

Article 13

Entry into force and application

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 apply from the date set by the Commission in accordance with Article 12, with the exception of:

a) points (53) to (61) of Article 1, which shall apply from ... [1 year after the date of entry into force of this amending Regulation];

b) point (65) of Article 1 as regards Articles 45e and 45f of Regulation (EC) No 767/2008, which shall apply from ... [2 years after the date of entry into force of this amending Regulation];

c) point 8 of Article 1 as regards Article 5a(3) of Regulation (EC) No 767/2008, point 9(f) of Article 1 as regards Article 6(5) of that Regulation, point 14(f) of Article 1 as regards the second subparagraph of Article 9 of that Regulation, point 15 as regards Article 9h(2) and Articles 9j(2) and 9e(3) of that Regulation, point 35 as regards Article 22b(19) of that Regulation, point 44(d) as regards Article 29(2a) of that Regulation, point 45 as regards Article 29a(3) of that Regulation, point 62, point 65 as regards the fourth subparagraph of Article 45c(3), Article 45c(5) and Article 45d(3) of that Regulation, points 67 and 68, point 70 as regards Article 50(4) of that Regulation, , point 2 of Article 4 as regards Article 9(2) of Regulation 2017/2226, which shall apply from …[the date of entry into force of this amending Regulation].

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	*For the Council*
The President	*The President*

ANNEX 1

CORRELATION TABLE for Council Decision 2004/512/EC

Council Decision 2004/512/EC	**Regulation (EC) No 767/2008**
Article 1(1)	Article 1
Article 1(2)	Article 2a
Article 2	-
Article 3 and 4	Article 45
Article 5	Article 49
Article 6	-

ANNEX 2

CORRELATION TABLE

Council Decision 2008/633/JHA	**Regulation (EC) No 767/2008**
Article 1	Article 1
Article 2	Article 4
Article 3	Articles 22l and 22m Article 45ab
Article 4	Article 22n
Article 5	Article 22o
Article 6	Article 22t
Article 7	Article 22m Article 22r
Article 8	Article 28(5), Article 31(4) and (5), and Chapter VI
Article 9	Article 32
Article 10	Article 33
Article 11	Article 35
Article 12	Article 36
Article 13	Article 30
Article 14	Article 38
Article 15	-
Article 16	Article 22s
Article 17	Article 50

ANNEX III

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 as regards the establishment of the conditions for accessing other EU information systems for VIS purposes

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e), Article 82(1)(d), Article 87(2)(a), and Article 88(2) thereof,

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[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

1 OJ C , , p. .
2 OJ C , , p. .

Whereas:

(1) The Visa Information System (VIS) was established by Council Decision 2004/512/EC[3] 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[4] (the 'VIS Regulation') laid down the purpose, functionalities and responsibilities of the VIS, 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[5] set out the rules on the registration of biometric identifiers in the VIS. Access of law enforcement authorities of the Member States and of Europol to VIS was established by Council Decision 2008/633/JHA[6]. The content of that Decision should be integrated into the VIS Regulation, to bring it in line with the current treaty framework.

(2) Interoperability between EU information systems was established by Regulations (EU) 2019/817 and 2019/818 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 immigration and ensuring a 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.

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

4 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).

5 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).

6 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).

(3) 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.

(4) The interoperability components cover the EES, the VIS, the ETIAS, Eurodac, the SIS, and the ECRIS-TCN, 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) established by Regulation (EU) 2019/818 of the European Parliament and of the Council 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.

(5) The European Search Portal (ESP), established by Regulation (EU) 2019/818 of the European Parliament and of the Council, will enable the data stored in VIS to be compared to the data stored in every other information system by means of a single query.

(6) 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 ETIAS 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, long-stay visa or residence permit.

(7) This Regulation lays down the manner in which interoperability and the conditions for the consultation of data stored in Eurodac, SIS and ECRIS-TCN and of Europol data by the VIS automated process for the purposes of identifying hits are to be implemented. As a result, it is necessary to amend Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 in order to connect the VIS to the other EU information systems and to Europol data.

(8) The conditions under which, on the one hand, the visa authorities may consult data stored in Eurodac and, on the other hand, the VIS designated authorities may consult Europol data, certain SIS data and data stored in ECRIS-TCN for the purposes of the VIS should be safeguarded by clear and precise rules regarding the access by those authorities to those data, the type of queries and categories of data, all of which should be limited to what is strictly necessary for the performance of their duties. In the same vein, the data stored in the VIS application file should only be visible to those Member States that are operating the underlying information systems in accordance with the modalities of their participation.

(9) Regulation (EU) XXXX/XXX [amending the VIS Regulation] allocates new tasks to the European Union Agency for Law Enforcement Cooperation (Europol) such as the provision of opinions following consultation requests by the VIS designated authorities and the ETIAS National Units. To implement those tasks, it is therefore necessary to amend Regulation (EU) 2016/794 of the European Parliament and of the Council[7] accordingly.

[7] 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).

(10) In order to support the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, VIS should be able to verify if correspondences exist between data in the VIS application files and the ECRIS-TCN data in the Common Identity Repository (CIR) as regards which Member States hold conviction information on third-country nationals and stateless persons for a terrorist offence or any other criminal offence listed in the annex to Regulation (EU) 2018/1240 if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years.

(11) A hit indicated by the ECRIS-TCN system should not of itself be taken to mean that the third-country national concerned has been convicted in the Member States that are indicated. The existence of previous convictions should only be confirmed based on information received from the criminal records of the Member States concerned.

(12) This Regulation is without prejudice to Directive 2004/38/EC[8].

(13) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, 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, insofar as its provisions relate to SIS as governed by Regulation (EU) 2018/1862, 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.

8 OJ L 158, 30.4.2004, p. 77.

(14) Insofar as its provisions relate to SIS as governed by Regulation (EU) 2018/1862, Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC[9]. Furthermore, insofar as its provisions relate to Europol, Eurodac and to ECRIS-TCN, in accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(15) As regards Iceland and Norway, this Regulation constitutes, insofar as it relates to SIS as governed by Regulation (EU) 2018/1862, 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 latters' association with the implementation, application and development of the Schengen acquis[10] which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC[11].

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9 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).

10 OJ L 176, 10.7.1999, p. 36.

11 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).

(16) As regards Switzerland, this Regulation constitutes insofar as it relates to SIS as governed by Regulation (EU) 2018/1862, 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[12] which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA[13].

(17) As regards Liechtenstein, this Regulation constitutes insofar as it relates to SIS as governed by Regulation (EU) 2018/1862, 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 development of the Schengen acquis[14] which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[15].

(18) In order to have this Regulation fit into the existing legal framework, Regulations (EU) 603/2013, 2016/794, 2019/816 and 2019/818 of the European Parliament and of the Council should be amended accordingly,

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12 OJ L 53, 27.2.2008, p. 52.

13 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).

14 OJ L 160, 18.6.2011, p. 21.

15 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).

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 603/2013

Regulation (EU) 603/2013 is amended as follows:

(1) a new Chapter is inserted:

"CHAPTER VIa
ACCESS BY VISA AUTHORITIES

Article 22a
Access to Eurodac by the competent visa authorities

For the purpose of manually verifying hits triggered by the automated queries carried out by the VIS in accordance with Articles 9a of Regulation (EC) No 767/2008 and examining and deciding on visa applications in accordance with Article 21 of Regulation (EC) No 810/2009, the competent visa authorities shall have access to Eurodac to consult data in a read-only format.

Article 22b
Interoperability with VIS

From the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], Eurodac shall be connected to the European search portal established by Article 6 of Regulation (EU) 2019/818 to enable the automated processing referred to in Articles 9a of Regulation (EC) No 767/2008.";

(2) the following ~~a~~ new article is inserted:

"Article 28a

Keeping of records or logs for the purpose of interoperability with VIS

When consulting Eurodac as referred to in Article 22a of this Regulation, a record or log of each data processing operation carried out within Eurodac and VIS shall be kept in accordance with Article 28 of this Regulation and Article 34 of Regulation (EC) No 767/2008.".

Article 2

Amendments to Regulation (EU) 2016/794

Regulation (EU) 2016/794 is amended as follows:

(1) in Article 4(1), the following point is inserted:

"(q) provide an opinion following a consultation request referred to in Articles 9cb(4), 9cab(3) and 22b(12) and (14) of Regulation (EC) No 767/2008.";

(2) Article 21 is amended as follows:

(a) the title is replaced by the following:

"Article 21

Access by Eurojust, OLAF and, only for purposes of ETIAS, by the European Border and Coast Guard Agency and, only for purposes of VIS, by the VIS designated authorities to information stored by Europol";

(b) the following paragraph is inserted:

"1b. Europol shall take all appropriate measures to enable the VIS designated authorities, for the purposes of Regulation (EC) No 767/2008, to have indirect access on the basis of a hit/no hit system to data provided for the purposes of point (a) of Article 18(2) of this Regulation, without prejudice to any restrictions indicated by the Member State, Union body, third country or international organisation providing the information in question, in accordance with Article 19(2) of this Regulation.

In the case of a hit, Europol shall initiate the procedure by which the information that generated the hit may be shared, in accordance with the decision of the provider of the information to Europol, and only to the extent that the data generating the hit are necessary for the performance of the VIS designated authorities' tasks related to VIS.

Paragraphs 2 to 7 of this Article shall apply accordingly.".

Article 3

Amendments to Regulation (EU) 2018/1862

Regulation (EU) 2018/1862 is amended as follows:

(1) the following article is inserted:

"Article 18a

Keeping of logs for the purpose of the interoperability with VIS

Logs of each data processing operation carried out within SIS and VIS pursuant to Article 50a of this Regulation shall be kept in accordance with Article 18 of this Regulation and Article 34 of Regulation (EC) No 767/2008.";

(2) in Article 44(1), the following point is added:

"(g) manually verifying hits triggered by automated queries from the VIS and assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Articles 9ca and 9cab or Article 22b of Regulation (EC) No 767/2008.";

(3) the following article is inserted:

"Article 50a
Interoperability with VIS

From the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the Central System of SIS shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/818 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008.".

Article 4

Amendments to Regulation (EU) 2019/816

Regulation 2019/816 is amended as follows:

(1) in Article 1 the following point is added:

"(d) the conditions under which data included in the ECRIS-TCN system may be used by the VIS designated authorities for the purpose of assessing whether the applicant for a visa, a long-stay visa or a residence permit is considered to pose a threat to public policy or internal security in accordance with point (i) of Article 2(1) and point (a) of Article 2(2) of Regulation (EC) No 767/2008.";

(2) in Article 2, the following subparagraph is added:

"This Regulation also supports the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Regulation (EC) No 767/2008.";

(3) in Article 3 point (6) is replaced by the following:

"(6) 'competent authorities' means the central authorities, Eurojust, Europol and the EPPO, and VIS designated authorities as referred to in Article 9ca and Article 22b(11) of Regulation (EC) No 767/2008, which are competent to access or query ECRIS-TCN in accordance with this Regulation;";

(4) Article 5 is amended as follows:

(a) in paragraph 1, the following point is added:

"(c) a flag indicating, for the purpose of Regulation (EC) No 767/2008, that the third-country national concerned has been convicted for a terrorist offence or any other criminal offence listed in the annex to Regulation (EU) 2018/1240 if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, and in those cases the code of the convicting Member State(s).";

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

"1a. The CIR shall contain the data referred to in point (b) of paragraph 1 and the following data of point (a) of paragraph 1: surname (family name); first names (given names), date of birth, place of birth (town and country), nationality or nationalities, gender, previous names, if applicable, where available pseudonyms or aliases, where available, the type and number of the person's travel documents, as well as the name of the issuing authority. The CIR may contain the data referred to in paragraph 3 as well as, in the cases referred to in point (c) of paragraph 1, the code of the convicting Member State(s). The remaining ECRIS-TCN data shall be stored in the central system.";

(c) the following paragraph is added:

"7. Where hits are identified following the automated processing referred to in Article 27a of Regulation (EC) No 767/2008, flags and the code of convicting Member State(s) as referred to in point (c) of paragraph 1 of this article shall be accessible and searchable onlyby the VIS Central System for the purpose of the verifications pursuant to Articles 7a of this Regulation in conjunction with Article 9a(3a)(e) or Article 22b(3)(e) of Regulation (EC) No 767/2008.

Without prejudice to the first sub-paragraph, the flags and the code of convicting Member State(s) as referred to in point (c) of paragraph 1 shall not be visible for any other authority than the central authority of the convicting Member State having created the flagged record";

(5) in Article 7, paragraph 7 is replaced by the following:

"7. In the event of a hit, the central system or the CIR shall automatically provide the competent authority with information on the Member States holding criminal record information on the third country national, along with the associated reference numbers referred to in Article 5(1) and any corresponding identity information. Such identity information shall only be used for the purpose of verifying the identity of the third country national concerned. The result of a search in the central system may only be used:

(a) for the purpose of making a request according to Article 6 of Framework Decision 2009/315/JHA;

(b) for the purpose of making a request referred to in Article 17(3) of this Regulation; or

(e) for the purpose of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Regulation (EC) No 767/2008.";

(6) the following Article is inserted:

"Article 7a

Use of the ECRIS-TCN system for VIS verifications

1. From the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], ECRIS-TCN shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/818 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008 to query ECRIS-TCN and compare the relevant data in the VIS with the relevant ECRIS-TCN data in the CIR, flagged pursuant to Article 5(1)(c) of this Regulation.

2. VIS designated authorities as referred to in Article 9ca and Article 22b(11) of Regulation (EC) No 767/2008, shall have, for the purpose of performing the tasks pursuant to that Regulation, the right to access ECRIS-TCN data in the CIR. However, they shall only have access to data records to which a flag has been added in accordance with Article 5(1)(c) of this Regulation.";

(7) in Article 8, paragraph 2 is replaced by the following:

"2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall erase the data record, including any fingerprint data, facial images or flags as referred to in Article 5(1)(c), from the central system and the CIR. In those cases where the data related to a conviction for a terrorist offence or any other criminal offence as referred to in Article 5(1)(c) are deleted from the national criminal record, but information on other convictions of the same person is retained, only the flag referred to in Article 5(1)(c) shall be removed from the data record. The erasure shall be done automatically, where possible, and in any event no later than one month after the expiry of the retention period.";

(8) in Article 8, paragraph 3 is inserted:

3. By way of derogation from paragraphs 1 and 2, the flags referred to in Article 5(1)(c) shall be erased automatically 25 years after the creation of the flag, as far as convictions related to terrorist offences are concerned, and 15 years after the creation of the flag, as far as convictions related to other serious criminal offences are concerned.

(9) in Article 24, the first sentence of paragraph 1 is replaced by the following:

"The data entered into the central system and the CIR shall only be processed for the purposes of the identification of the Member States holding the criminal records information of third country nationals, or to support the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security in accordance with Regulation (EC) No 767/2008. ";

(10) the following Article is inserted:

"Article 31a

Keeping of logs for the purpose of interoperability with VIS

For the consultations listed in Article 7a of this Regulation, a log of each ECRIS-TCN data processing operation carried out within the CIR and VIS shall be kept in accordance with Article 34 of Regulation (EC) No 767/2008.".

Article 5

Amendments to Regulation (EU) 2019/818

Regulation 2019/818 is amended as follows:

(1) In Article 4, point 20 is replaced by the following:

"(20) ‘designated authorities’ means the Member State designated authorities as defined in point (26) of Article 3(1) of Regulation (EU) 2017/2226, point (3a) of Article 4 of Regulation (EC) No 767/2008, and point (21) of Article 3(1) of Regulation (EU) 2018/1240;";

(2) In Article 18, the following paragraph is inserted:

"1a. For the purpose of Articles 9a and 22b of Regulation (EC) No 767/2008 the CIR shall also store, logically separated from the data referred to in paragraph 1 of this Article, the data referred to in point (c) of Article 5(1) of Regulation (EU) 2019/816. The data referred to in point (c) of Article 5(1) of Regulation (EU) 2019/816 shall be accessible only in the manner referred to in Article 5(7) of that Regulation.”;

(3) In Article 68, a new paragraph is inserted:

"1a. Without prejudice to paragraph 1, for the purposes of the automated processing of Articles 9a and 22b of Regulation (EC) No 767/2008, the ESP shall start operations, limited to those purposes, from the date of application of the revised VIS, as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation].".

Article 6

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 apply from the date of application referred to in [the second sub-paragraph of] Article 13 of Regulation XXX/XXX [amending the VIS Regulation].

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