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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 603/2013, (EU) 2016/794, (EU) 2018/1862, (EU) 2019/816 and (EU) 2019/818 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the Visa Information System

REGULATION (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**amending Regulations (EU) No 603/2013, (EU) 2016/794, (EU) 2018/1862, (EU) 2019/816
and (EU) 2019/818 as regards the establishment of the conditions for accessing
other EU information systems for the purposes of the Visa Information System**

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 point (e) of Article 78(2), point (d) of Article 82(1), point (a) of Article 87(2), 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 Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 440, 6.12.2018, p. 154.

² Position of the European Parliament of 13 March 2019 (not yet published in the Official Journal) and position of the Council at first reading of ... (not yet published in the Official Journal). Position of the European Parliament of ... (not yet published in the Official Journal).

Whereas:

- (1) The Visa Information System (VIS) was established by Council Decision 2004/512/EC¹ to serve as the technological solution for exchanging visa data between Member States. Regulation (EC) No 767/2008 of the European Parliament and of the Council² laid down the purpose, functionalities and responsibilities for 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 applications for short-stay visas and related decisions. Regulation (EC) No 810/2009 of the European Parliament and of the Council³ set out the rules on the registration of biometric identifiers in the VIS. The access of law enforcement authorities of the Member States and of the European Union Agency for Law Enforcement Cooperation (Europol) to the VIS was established by Council Decision 2008/633/JHA⁴. That Decision should be integrated into Regulation (EC) No 767/2008, to bring it in line with the current Treaty framework.

¹ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa information System (VIS) (OJ L 213, 15.6.2004, p. 5).

² 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).

³ 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).

⁴ 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).

- (2) Interoperability between certain EU information systems was established by Regulations (EU) 2019/817¹ and (EU) 2019/818² of the European Parliament and of the Council so that those systems and their data supplement each other with a view to improving the effectiveness and efficiency of border checks at the external borders of the Union, contributing to preventing and combating illegal immigration and contributing to 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 security in the territories of the Member States.

¹ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

² Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

- (3) Interoperability between the EU information systems allows those systems to supplement each other in order to facilitate the correct identification of persons, contribute to fighting identity fraud, improve and harmonise data quality requirements of the relevant 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 relevant EU information systems, streamline the law enforcement access to the VIS, the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS) and Eurodac, and support the purposes of the VIS, Schengen Information System (SIS) the EES, the ETIAS, Eurodac, and the European Criminal Records Information System for third-country nationals (ECRIS-TCN).
- (4) The interoperability components cover the VIS, the SIS, the EES, the ETIAS, Eurodac, and ECRIS-TCN, as well as Europol data to enable Europol data to be queried simultaneously with those EU information systems. It is therefore appropriate to use those interoperability components for the purpose of carrying out automated queries and when accessing the VIS for law enforcement purposes. The European search portal (ESP) established by Regulation (EU) 2019/818 should be used to enable fast, seamless, efficient, systematic and controlled access by Member States' authorities 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 ESP will enable the data stored in the VIS and the data stored in the other EU information systems concerned to be queried in parallel.
- (6) The comparison of data stored in the VIS against data stored in other information systems and databases should be automated. If such a comparison reveals the existence of a correspondence, known as a 'hit', between any of the personal data or combination thereof in an application and a record, file or alert in those other information systems or databases, or with personal data in the ETIAS watchlist, the application should be verified manually by an operator from the competent authority. The assessment of hits performed by the competent authority should be taken into account for the decision whether to issue a short-stay visa, a long-stay visa or a residence permit.

- (7) This Regulation lays down the manner in which interoperability and the conditions for the consultation of the data stored in SIS, Eurodac and ECRIS-TCN as well as of the Europol data by the VIS automated process for the purpose of identifying hits are to be implemented. As a result, it is necessary to amend Regulations (EU) No 603/2013¹, (EU) 2016/794², (EU) 2018/1862³, (EU) 2019/816⁴ and (EU) 2019/818 of the European Parliament and of the Council in order to connect the VIS to the other EU information systems and to Europol data.

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- ¹ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).
- ² 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).
- ³ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).
- ⁴ Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

- (8) The conditions under which, on the one hand, the visa authorities are able to consult data stored in Eurodac and, on the other, the VIS designated authorities are able to 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 the duties of those authorities. In the same vein, the data stored in the VIS application file should be visible only to those Member States that are operating the underlying information systems in accordance with the arrangements for their participation.
- (9) Regulation (EU) 2021/... of the European Parliament and of the Council¹⁺ allocates new tasks to 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 accordingly.

¹ Regulation (EU) 2021/... of the European Parliament and of the Council of ... 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 (OJ L ...).

⁺ OJ: please insert in the text the number of the Regulation contained in document ST 5950/21 (2018/0152A(COD)) and the number, date and OJ reference of that Regulation in the footnote.

- (10) In order to support the VIS objective of assessing whether an applicant for a short-stay visa, a long-stay visa or a residence permit could pose a threat to public policy or public security, the VIS should be able to verify whether any correspondence exists between data in the VIS application files and the ECRIS-TCN data in the Common Identity Repository (CIR) established by Regulation (EU) 2019/818 in regard to which Member States hold information on third-country nationals and stateless persons concerning convictions for a terrorist offence or any other criminal offence listed in the Annex to Regulation (EU) 2018/1240 of the European Parliament and of the Council¹ if it is punishable by a custodial sentence or a detention order for a maximum period of at least three years under national law.
- (11) A hit indicated by ECRIS-TCN should not by 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 be confirmed only on the basis of information received from the criminal records of the Member States concerned.
- (12) This Regulation is without prejudice to Directive 2004/38/EC of the European Parliament and of the Council².

¹ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

² 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).

- (13) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (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 it relates 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.
- (14) Insofar as it relates 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/EC¹. Furthermore, insofar as it relates to Europol, Eurodac and 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 to 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.

¹ 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).

- (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 latter's association with the implementation, application and development of the Schengen *acquis*¹ which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC².
- (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*³ 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/JHA⁴.

¹ OJ L 176, 10.7.1999, p. 36.

² 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).

³ OJ L 53, 27.2.2008, p. 52.

⁴ 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).

- (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*¹ 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/EU².
- (18) For this Regulation to fit into the existing legal framework, Regulations (EU) No 603/2013, (EU) 2016/794, (EU) 2018/1862, (EU) 2019/816 and (EU) 2019/818 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

¹ OJ L 160, 18.6.2011, p. 21.

² 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).

Article 1
Amendments to Regulation (EU) No 603/2013

Regulation (EU) No 603/2013 is amended as follows:

- (1) the following Chapter is inserted:

“CHAPTER VIa
ACCESS BY VISA AUTHORITIES

Article 22a

Access to Eurodac by the competent visa authorities

The competent visa authorities shall have access to Eurodac to consult data in a read-only format for the purposes of manually verifying hits triggered by the automated queries carried out by VIS pursuant to Article 9a of Regulation (EC) No 767/2008 of the European Parliament and of the Council* and examining and deciding on visa applications in accordance with Article 21 of Regulation (EC) No 810/2009**.

* 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) (OJ L 218, 13.8.2008, p. 60).

** 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).

Article 22b

Interoperability with VIS

From the date of the start of operations of VIS pursuant to Article 11 of Regulation (EU) 2021/ ... of the European Parliament and of the Council⁺ Eurodac shall be connected to the European search portal established by Article 6 of Regulation (EU) 2019/818 of the European Parliament and of the Council^{**} to enable the automated processing pursuant to Article 9a of Regulation (EC) No 767/2008.

* Regulation (EU) 2021/... of the European Parliament and of the Council of ... 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 (OJ L ...).

** Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).”;

⁺ OJ: please insert in the text the number of the Regulation contained in doc. ST 5950/21 (2018/0152A(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

(2) the following Article is inserted:

“Article 28a

Keeping of records or logs for the purposes 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 added:

“(q) provide an opinion following a consultation request referred to in Article 9e(4), Article 9g(4) and Article 22b(14) and (16) of Regulation (EC) No 767/2008 of the European Parliament and of the Council*.

* 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) (OJ L 218, 13.8.2008, p. 60).”;

(2) Article 21 is amended as follows:

(a) the title is replaced by the following:

“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. Such information may be shared 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 purposes of 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 of the European Parliament and of the Council*.

* 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) (OJ L 218, 13.8.2008, p. 60).”;

- (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 could pose a threat to public policy or public security, in accordance with Articles 9d and 9g or Article 22b, of Regulation (EC) No 767/2008.”;

(3) the following article is inserted:

“Article 50a

Interoperability with VIS

From the date of the start of operations of VIS pursuant to Article 11 of Regulation (EU) 2021/ ... of the European Parliament and of the Council*+ the SIS Central System shall be connected to the ESP to enable the automated processing pursuant to in Articles 9a and 22b of Regulation (EC) No 767/2008.

* Regulation (EU) 2021/... of the European Parliament and of the Council of ... 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 (OJ L ...).”.

+ OJ: please insert in the text the number of the Regulation contained in doc. ST 5950/21 (2018/0152A(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

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 in ECRIS-TCN may be used by the VIS designated authorities as referred to in Article 9d and Article 22b(13) of Regulation (EC) No 767/2008 of the European Parliament and of the Council* for the purpose of assessing whether an applicant for a visa, a long-stay visa or a residence permit could pose a threat to public policy or internal security as referred to in point (i) of Article 2(1) and point (a) of Article 2(2) of that Regulation.

* 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) (OJ L 218, 13.8.2008, p. 60).”;

(2) in Article 2, the following paragraph 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 could pose a threat to public policy or internal 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 the VIS designated authorities as referred to in Article 9d and Article 22b(13) 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 of a terrorist offence or any other criminal offence listed in the Annex to Regulation (EU) 2018/1240 if it is punishable by a custodial sentence or a detention order for a maximum period of at least three years under national law, including the code of the convicting Member State.”;

(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. 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, the flags and the code of the convicting Member State referred to in point (c) of paragraph 1 of this Article shall be accessible and searchable only by the VIS Central System for the purpose of the verifications pursuant to Article 7a of this Regulation in conjunction with point (e) of Article 9a(4) or point (e) of Article 22b(3) of Regulation (EC) No 767/2008.

Without prejudice to the first subparagraph of this paragraph, the flags and the code of the convicting Member State referred to in point (c) of paragraph 1 shall not be visible to any authority other 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 be used only for the purpose of verifying the identity of the third-country national concerned. The result of a search in the central system shall be used only for the purpose of:

- (a) making a request pursuant to Article 6 of Framework Decision 2009/315/JHA;
- (b) making a request as referred to in Article 17(3) of this Regulation; or
- (c) assessing whether the applicant for a visa, a long-stay visa or a residence permit could pose a threat to public policy or internal security, in accordance with Regulation (EC) No 767/2008.”;

(6) the following Article is inserted:

“Article 7a

Use of ECRIS-TCN for VIS verifications

1. From the date of the start of operations of VIS pursuant to Article 11 of Regulation (EU) 2021/... of the European Parliament and of the Council*+ ECRIS-TCN shall be connected to the ESP to enable the automated processing pursuant to 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 point (c) of Article 5(1) of this Regulation.
2. For the purpose of performing the tasks pursuant to Regulation (EC) No 767/2008, the VIS designated authorities as referred to in Article 9d and Article 22b(13) of that Regulation shall have the right to access only those ECRIS-TCN data in the CIR to which a flag has been added pursuant to point (c) of Article 5(1) of this Regulation.

* Regulation (EU) 2021/... of the European Parliament and of the Council of ... 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 (OJ L ...).”;

+ OJ: please insert in the text the number of the Regulation contained in doc. ST 5950/21 (2018/0152A(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

(7) Article 8 is amended as follows:

(a) 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 point (c) of Article 5(1), from the central system and the CIR. In cases where the data related to a conviction for a terrorist offence or any other criminal offence as referred to in point (c) of Article 5(1) are erased from the national criminal record, but information on other convictions of the same person is retained, only the flag referred to in point (c) of Article 5(1) shall be removed from the data record. Where possible the erasure shall be done automatically, and in any event no later than one month after the expiry of the retention period.”;

(b) the following paragraph is added:

“3. By way of derogation from paragraphs 1 and 2, the flags referred to in point (c) of Article 5(1) shall be erased automatically 25 years after the creation of the flag as regards convictions related to terrorist offences, and 15 years after the creation of the flag as regards convictions related to other criminal offences.”;

(8) in Article 24, paragraph 1 is replaced by the following:

“1. The data entered into the central system and the CIR shall be processed only 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 could pose a threat to public policy or internal security in accordance with Regulation (EC) No 767/2008. The data entered into the CIR shall also be processed in accordance with Regulation (EU) 2019/818 for facilitating and assisting in the correct identification of persons registered in the ECRIS-TCN in accordance with this Regulation.”;

(9) the following Article is inserted:

“Article 31a

Keeping of logs for the purpose of interoperability with VIS

For the consultations referred to 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 (EU) 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, the following paragraph is inserted:

“1a. Without prejudice to paragraph 1 of this Article, the ESP shall start operations, for the purposes of the automated processing pursuant to Articles 9a and 22b of Regulation (EC) No 767/2008 only, from the date of the start of operations of VIS pursuant to Article 11 of Regulation (EU) 2021/ ... of the European Parliament and of the Council*+.

* Regulation (EU) 2021/... of the European Parliament and of the Council of ... 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 (OJ L ...).”

+ OJ: please insert in the text the number of the Regulation contained in doc. ST 5950/21 (2018/0152A(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

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 the start of operation of VIS pursuant to Article 11 of Regulation (EU) 2021/...⁺.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

⁺ OJ: please insert in the text the number of the Regulation contained in document ST 5950/21 (2018/0152A(COD)).