



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 December 2006

16229/06

**Interinstitutional File:
2004/0287 (COD)**

LIMITE

**VISA 320
CODEC 1469
COMIX 1031**

NOTE

from : Presidency
to : Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee
(EU-Iceland/Norway/Switzerland)
Subject : Draft Regulation of the European Parliament and of the Council concerning the
Visa Information System (VIS) and the exchange of data between Member States
on short-stay visas

I Introduction

The draft VIS Regulation was examined by the Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee (EU- Iceland/Norway/Switzerland) at the latest occasion on 17 October 2006. The Presidency compromise text resulting from that meeting is set out in 14359/06 VISA 271 CODEC 1166 COMIX 871.

The Presidency has since been in contact with the European Parliament and the Commission on a number of issues. These issues were discussed at an informal political trilogue on 4 December 2006 between the European Parliament, the Commission and the Presidency¹. The outcome thereof is set out under II below.

¹ Baroness Sarah Ludford, Member of the European Parliament and Rapporteur on the draft VIS Regulation and the draft VIS Decision, Commissioner Vice Presidency Franco Frattini and Mr Kari RAJAMÄKI, Minister of the Interior.

In addition, the Visa/Vision Working Party discussed on 30 November 2006 the integration of the Vision network in the VIS. Information on this point is set out on III below.

Certain suggestions for rewording related to II and III are set out in the Annex.

II Outcome of the trilogue between the European Parliament, the Commission and the Presidency on 4 December 2006

The European Parliament reiterated its position in relation to the "bridging clause" and the storage of data on "misused visa" in the VIS. In addition, the European Parliament signalled a number of other issues set out below.

1) Bridging clause

There was agreement in principle that the VIS Regulation should contain a "bridging clause" that allows VIS data to be used for "third pillar" purposes.² However, the European Parliament recalled the basic parameters requested by it :

- Access only in a specific case (on a case-by-case basis),
- Prior written or electronic requests for accessing the VIS,
- Access only through central access point(s),
- Prior entry into force of the Framework Decision on data protection in the third pillar.
- No transfer of data to third countries.

It was concluded that further examination of this issue was needed.

² Article 1B of the draft VIS Regulation combined with the draft Council Decision concerning access to the VIS. The latest version of the draft Decision is set out in 14196/1/06 REV 1 CATS 157 ENFOPOL 175 EUROPOL 90 VISA 267 COMIX 861.

2) Additional Article on "data on misused visa" (Article 11A)

The European Parliament was sympathetic towards the possible introduction of a provision on data on misused visas. However, the European Parliament thought that it was premature to include such a provision as long as the draft Regulation establishing a Community Code for visas had not been finalised. The European Parliament thought on this basis that Article 11A should not be included at this stage but that a declaration on how to come back to this issue could be introduced. This declaration would invite the Commission to study the matter and make any appropriate proposals. The Commission agreed with this approach and the presidency concluded that the matter would be discussed in SCIFA.

The Presidency accordingly suggests that consideration be given to a declaration, on the basis indicated below, as offering a basis for agreement with the European Parliament at this stage:

"The European Parliament and the Council invite the Commission to report to the European Parliament and the Council not later than [x] years after the start of operations of the VIS on the situation as regards the misuse of visas by visa holders and misuse of invitations. On the basis of an assessment of this report and taking into account also the future Regulation establishing a Community Code for visas the Commission is invited to present, if necessary, appropriate proposals for amendments to the VIS Regulation."

3) Other issues

In the light of the outcome of the trilogue and other contacts with the European Parliament, the Presidency suggests the following compromise text for specific Articles.

- Article 2 (3)

A new draft is set out in the Annex.

- **Articles 6-7**

The Presidency suggests that the two articles are merged, no additional data is added and the reference to data on the applicant's father and mother is deleted. As fingerprints will be collected from the visa applicant, the Presidency finds that this deletion could be acceptable.

- **Article 10 (2) (c)**

The European Parliament wishes to anchor the issue of "risk of illegal immigration" in/by some objective elements or documents. However, given the fact that an applicant is considered as representing the risk of illegal immigration can not necessarily be based on a specific document but is based on an assessment of a number of factors, the Presidency has not accepted the entire amendment asked for, but suggests a slightly modified text to clarify the meaning.

- **Articles 16-16a-17**

There seems to be agreement as to the new structure of these articles as suggested by the Presidency. In the Presidency's view the amended wording as set out in the Annex would also meet the concerns expressed by some delegations in relation to the balance to be struck between security aspects of the practical border control procedures and take on board the points made by delegations in the Frontiers Working Party on 30 October 2006.

- **Articles 18 (1) and 19 (1)**

The Presidency suggests a new drafting of these paragraphs in order to clarify the search criteria in relation to asylum seekers, in particular that nationality cannot alone be used as search key.

4) Additional issues raised by the European Parliament

The European Parliament has raised a number of additional issues which in the Presidency's view must be assessed further:

a) Copying of VIS data

The European Parliament has suggested the addition of a new Article 25A on this matter. The original Commission proposal did not contain any reference to these aspects and the issue of copying of VIS data should be assessed further at technical level (see draft Article 25A in the Annex).

b) Transfer of data to third countries

The European Parliament has suggested that a provision similar to the one contained in Article 29A of the SIS II Regulation be added. The Presidency would not be opposed to this and suggests the new Article 25B set out in the annex.

c) Comitology

The European Parliament wishes the regulatory procedure with scrutiny to be applicable for the choice of the regions in which the VIS should start to operate (Article 38(3)) and the replacement of the Schengen consultation mechanism (Article 36A). The Presidency would like to invite the Council Legal Service to examine whether this request is appropriate.

d) "Fall back" procedure

The European Parliament has suggested the addition of a provision on procedures for cases where a persons claims to have been falsely refused a visa. In the view of the Presidency such a provision, if appropriate, should be covered in the draft Regulation on a Community Code on Visas.

III VISION Consultation Network - Integration with the Visa Information System

The Council Conclusions of 19 February 2004 on the Development of the Visa Information System (VIS) stipulate that the technical functionalities of the VISION Network should be integrated into the VIS. The draft VIS Regulation will provide the mandate for the Commission to implement the VIS including the functionalities to enable, once VIS is operational, the exchange of consultation messages in line with Article 14. However, the draft VIS Regulation has not yet been adopted and this means that VIS will not be ready to start operations within the timeframe envisaged in the initial VIS project plan. Article 36A of the draft Regulation foresees that there will be one single date determined by the Commission when the current consultation mechanism will be replaced by the functionalities provided by Article 14. The migration to VIS will now only be possible once all Member States which use the VISION at the date of entry into force of the VIS Regulation have connected all their visa Consulates to the Central VIS via their National VIS.

At the meeting of the Visa/Vision Working Party on 30 November 2006, there seemed to be agreement among delegations that no interim solution would be necessary. The Presidency has suggested an amendment to Article 36A to clarify this.

Article 2(3)

"visa authorities' means **the** authorities which in each Member State are responsible for examining and for taking decisions on 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 in accordance with Council Regulation (EC) 415/2003."

Article 6

Data upon lodging the application

The visa authority shall enter the following data in the application file:

- (1) the application number.
- (2) status information, indicating that a visa has been requested.
- (3) the authority to which the application has been lodged, including its location, and whether the application has been lodged to that authority representing another Member State.
- (4) the following data to be taken from the application form:
 - (a) surname, surname at birth (earlier surname(s)); first names; sex; date, place and country of birth;
 - (b) current nationality and nationality at birth;
 - (c) type and number of the travel document, the authority which issued it and the date of issue and of expiry;
 - (d) place and date of the application;
 - (e) type of visa requested;
 - (f) details of the person issuing an invitation and/or liable to pay the costs of living during the stay, being:
 - (i) in the case of a natural person, surname, first name and address of the person;
 - (ii) in the case of a company or other organisation, the name and address of the company/other organisation, surname and first name of the contact person in that company / organisation.

- (g) main destination and duration of the intended stay;
- (h) purpose of travel;
- (i) intended date of arrival and departure;
- (j) intended border of first entry or transit route;
- (k) residence;
- (l) current occupation and the employer/for students: name of school;
- ~~(m) surname and first name(s) of the applicant' father and mother.~~
- (5) the photograph of the applicant, in accordance with Regulation (EC) No 1683/95;
- (6) fingerprints of the applicant, in accordance with the relevant provisions of the Common Consular Instructions.

Article 7 - deleted

Article 10(2)(c)

"(c) does not justify the purpose and conditions of stay; in particular **is considered to represent a specific risk to illegal immigration because he/she does not present credible information and/or sufficiently persuasive information or documents.**"

Article 16 - Access to data for verification at the external border crossing points

- (1) For the sole purpose of verifying the identity of the holder of the visa and/or the authenticity of the visa and/or whether the conditions for entry to the territory of the Member States according to Article 5 of the Schengen Borders Code are fulfilled the competent authorities for carrying out checks at external border crossing points in accordance with the Schengen Borders Code shall have access to search with
 - (a) the number of the visa sticker, in combination with verification of the fingerprints of the holder of the visa, or
 - (b) **the number of the visa sticker.**

This search shall be carried out only with the number of the visa sticker for visa holders who are exempted from providing fingerprints in accordance with the relevant provisions of the Common Consular Instructions.

**Article 16a - Access to data for checks on visas within the
territory of the Member States**

- (1) For the sole purpose of verifying the identity of the holder of the visa and/or the authenticity of the visa and/or whether the conditions for entry to the territory of the Member States according to Article 5 of the Schengen Borders Code are fulfilled, the competent authorities for carrying out checks at external border crossing points in accordance with the Schengen Borders Code shall have access to search with
- (a) the number of the visa sticker, in combination with verification of the fingerprints of the holder of the visa, or
- (b) the number of the visa sticker.**

This search shall be carried out only with the number of the visa sticker for visa holders who are exempted from providing fingerprints in accordance with the relevant provisions of the Common Consular Instructions.

Article 17 - Access to data for identification

- (1) The authorities competent for carrying out checks at external border crossing points or within the territory of the Member States whether the conditions for the entry, stay and residence on the territory of the Member States are fulfilled, shall have access to search with **the fingerprints**, solely for the purpose of identification of any person who may not, or may no longer fulfil the conditions for the entry, stay and residence on the territory of the Member States. **Where the fingerprints of this person cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 6(4)(a) and/or (c) and, if appropriate with the data referred to in Article 6(4)(b).**

Article 18

Access to data for determining the responsibility for asylum applications

- (1) The competent asylum authorities shall have access to search with **the fingerprints of the asylum seeker** for the sole purpose of determining the Member State responsible for examining an asylum application according to Article 9 and 21 of Regulation (EC) No. 343/2003. **Where the fingerprints of this person cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 6(4)(a) and/or (c) and, if appropriate with the data referred to in Article 6(4)(b).**

Article 19

Access to data for examining the application for asylum

(1) The competent asylum authorities shall have access only through designated national authorities in accordance with Article 21 of Regulation (EC) No 343/2003 to search with the **fingerprints of the asylum seeker**, for the sole purpose of examining an application for asylum. **Where the fingerprints of this person cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 6(4)(a) and/or (c) and, if appropriate with the data referred to in Article 6(4)(b).**

NEW Article 25A

Copying of VIS data

1. Without prejudice to the use of VIS data in accordance with the purposes of the VIS, no copies of VIS data shall be made.
2. Paragraph 1 shall not prejudice the right of a Member State to keep in its national files data which that Member State has entered in the VIS.
3. Any use of data which does not comply with paragraphs 1 to 2 shall be considered as misuse under the national law of each Member State.

NEW Article 25B
Transfer of data to third parties

Data processed in the VIS in application of this Regulation shall not be transferred or made available to a third country or an international organisation."

Article 36A

Integration of the technical functionalities of the Schengen consultation network

The consultation mechanism referred to in Article 14 shall replace the Schengen Consultation Network from the date determined in accordance with the procedure referred to in Article 39(2a) when all those Member States which use the Schengen Consultation Network at the date of entry into force of this regulation, have notified the legal and technical arrangements **to use the VIS for the purposes of consultation between central visa authorities on visa applications according to Article 17(2) of the Schengen Convention.**

—————