



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 July 2008**

**11527/08**

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**Interinstitutional File:  
2006/0088 (COD)**

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**CODEC 934  
VISA 238  
COMIX 550**

**NOTE**

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from: General Secretariat  
to: Permanent Representatives' Committee/Council  
Subject: Proposal for a Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications  
– Outcome of the European Parliament's first reading  
(Strasbourg, 7 to 10 July 2008)

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**I. INTRODUCTION**

The Rapporteur, Baroness Sarah LUDFORD (ALDE - UK), presented a report consisting of 29 amendments (amendments 1-29) to the proposal for a Regulation on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

**II. DEBATE**

Commissioner Jacques BARROT opened the debate, which took place on 9 July 2008, and:

- stressed the important work of the Slovenian Presidency which had the aim of reaching an agreement in first reading. Those negotiations could have been continued in order to find an agreement at this stage. Nevertheless, the EP decided to vote during this plenary session and to adopt its opinion in the first reading. He stressed the need to continue the negotiations.

- pointed out that there are three outstanding issues: the age limit for the collection of finger prints of children, the diplomatic and consular immunity of external service providers and the visa fees charged by external service providers.
- indicated that the Commission could, as a compromise, accept the idea of limiting the collection of fingerprints for children between the age of 6 and 12 years to verification purposes and of not using them for identification reasons.
- regarding the establishment of external service providers, pointed out that the Member States have drawn up a list of requirements which must be complied with if a Member State wants to make use of this possibility as a last resort.
- noted that allowing this Regulation to go to a second reading now puts in danger the start and the application of the Visa Information System (VIS) in May 2009. Mr Barrot asked for speedy continuation of the negotiations to find an agreement as soon as possible.

The Rapporteur, Baroness Sarah LUDFORD (ALDE - UK):

- recalled that this proposal is part of the VIS package and that therefore coherence between the proposals, especially the proposal on Visa Code, must be ensured.
- agreed with the Commissioner about the outstanding key issues, such as the age for finger prints taken from children, the outsourcing of visa applications and the protection of data.
- regarding the age of fingerprints of children, stressed that technical uncertainties and, in particular, the costs and inconvenience for the parents militate against the application of the age limit of six years. Baroness Ludford proposed exempting children under the age of 12 from the obligation to provide fingerprints at the outset, but to have a review after three years, following a detailed study concerning the technical feasibilities, reliability and proportionality of such an approach.
- stressed the importance of data protection and data security from the moment of the collection of biometrics. She asked for assurances that the visa-issuing process and the collection of data would take place under consular and diplomatic protection, also when outsourced, and under the presence of consular officials to supervise the staff of the external service provider. She urged Member States to explore the possibilities of co-location and of common application centres.

- regarding the question of visa fees, pointed out that she cannot accept Member States' making visa applicants pay for the extra costs which derive from outsourcing. Extra fees when external service providers act, in addition to the standard visa fees are not acceptable for the European Parliament.

Speaking on behalf of the EPP/ED political group, Ms Ewa KLAMT (EPP/ED – DE):

- expressed general support for the amendments in the report voted upon in the LIBE Committee. The Common Consular Instructions must be redefined and adapted to current situations. Visa applicants should in future be identified by their fingerprints and biometric data.
- stated that her group cannot support the approach of the Rapporteur regarding the age of children to be fingerprinted. She spoke in favour of the age limit of six years as proposed by the Commission in order to make trafficking in children within the European Union more difficult.

Speaking on behalf of the PES political group, Ms Martine ROURE (PES – FR):

- expressed full support for Baroness Ludford's report.. The European visa policy must ensure the safety of visas but also respect the fundamental rights and civil liberties of the third country nationals applying for them.
- supported the position of the Rapporteur regarding the outsourcing of visa applications and the collection of biometric data and the protection thereof. Outsourcing should only be the last resort, other means, such as co-location and common application centres, should be tried beforehand. If the visa-application process is outsourced to external service providers their premises must benefit from diplomatic and consular protection. Furthermore, extra fees in addition to the visa fee are not acceptable.
- recalled that her group is fully in line with the Rapporteur regarding the age of fingerprints taken from children, i.e. for the moment at the age of 12 years. A review of the age limit after three years' practical experience and after a study by the Commission on the feasibility can be supported.

Speaking on behalf of the Greens/EFA political group, Ms Tatjana ZDANOKA (Greens/EFA - LV):

- stated that her political group cannot accept any use of biometrics in the EU until its necessity is proven beyond reasonable doubt. The introduction of biometrics has crucial implications for data security and for fundamental rights. Therefore the Greens/EFA political group cannot vote in favour of the report at all.
- stressed, nevertheless, the importance of data protection, in particular in relation to the outsourcing of visa application and collection of biometrics.

Speaking on behalf of the GUE/NGL political group, Ms Sylvia Yvonne KAUFMANN (GUE/NGL - DE):

- noted that the introduction of biometrics in visa is not acceptable, in particular regarding small children. She asked for an intensive study to verify the implication of such an approach.
- stated that she sees practical difficulties for visa applicants. They have to come in person to the consulates to get their fingerprints taken, this applies also for children. The financial burdens would lead to the result that poorer families cannot apply for visas anymore.
- stressed that external service providers should only be allowed to operate under strict conditions and their premises must benefit from diplomatic protection. The respect of data protection must be guaranteed, too.

### III. VOTE

The parliament adopted the 29 amendments of the report adopted in the Committee on Civil Liberties, Justice and Home Affairs when it voted in plenary on 10 July 2008 (amendments 1-29).

The text of the amendments adopted and the European Parliament's legislative resolution are annexed to this note.

**Common consular instructions: biometric identifiers and visa applications \*\*\*I**

**European Parliament legislative resolution of 10 July 2008 on the proposal for a regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications (COM(2006)0269 – C6-0166/2006 – 2006/0088(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0269),
  - having regard to Article 251(2) and Article 62 (2) (b) (ii) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0166/2006),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0459/2007),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and the Commission.

## Amendment 1

## RECITAL 3

(3) The ***choice of the biometric identifiers is made in the*** [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]. This Regulation defines the standards for the collection of these biometric identifiers by referring to the relevant provisions set out by the International Civil Aviation Organisation (ICAO). No further technical specifications are required in order to ensure interoperability.

(3) The 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 (VIS Regulation) ***provides that fingerprints and photographs of the applicant should be stored in the VIS.*** This Regulation defines the standards for the collection of these biometric identifiers by referring to the relevant provisions set out by the International Civil Aviation Organisation (ICAO). No further technical specifications are required in order to ensure interoperability.

## Amendment 2

## RECITAL 3 A (new)

***(3a) The reception arrangements for applicants should be made with due respect for human dignity and integrity. The processing of visa applications should be conducted in a professional and respectful manner and be proportionate to the objectives pursued.***

Amendment 3  
RECITAL 5

(5) Other options such as co-location, common application centres and outsourcing should be introduced. An appropriate legal framework for these options should be established, taking into account in particular data protection issues. Under the legal framework established Member States should be free to determine which type of organisational structure they will use in each third country. Details of those structures should be published by the Commission.

(5) Other options such as co-location, common application centres and outsourcing should be introduced. An appropriate legal framework for these options should be established, taking into account in particular data protection issues. ***In order to ensure the integrity of the visa issuing process, any activity related to the issuing of visas, including the collection of biometric data, should take place on the premises of a Member State which enjoy diplomatic or consular protection under international law or on European Commission premises recognised by the host State as inviolable.*** Under the legal framework established Member States should be free ***in accordance with the conditions laid down in in this Regulation*** to determine which type of organisational structure they will use in each third country. Details of those structures should be published by the Commission ***on a common Schengen visa internet site.***

Amendment 4  
RECITAL 7

***(7) It is necessary to make provisions for situations in which Member States' central authorities decide*** to outsource part of the visa handling process to an external service provider. Such arrangements should be established in strict compliance with the general principles for issuing visas, respecting the data protection requirements set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

***(7) Since the issuing of visas is by its very nature a public task, any decision taken by the central authorities of a Member State*** to outsource part of the visa handling process to an external service provider ***should only be taken if no other possibility exists and if it is duly justified.*** Such arrangements should be established in strict compliance with the general principles for issuing visas, respecting the data protection requirements set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Amendment 5  
RECITAL 8

(8) Member States *shall* conclude *contracts* with external service providers *which* should contain provisions on their exact responsibilities, direct and total access to their premises; information of applicants, confidentiality and circumstances, conditions and procedures for suspending or terminating the contract.

(8) *Any contract that a Member State concludes* with *an* external service provider should contain provisions on *the provider's* exact responsibilities, direct and total access to *its* premises; information of applicants, confidentiality, *compliance with data protection rules* and circumstances, conditions and procedures for suspending or terminating the contract. *Member States should take appropriate measures to ensure that the contracts with external service providers are enforceable.*

Amendment 6  
RECITAL 8 A (new)

*(8a) Member States should aim to organise the receipt of visa applications, the enrolment of biometric identifiers and the interview in such a way that the visa applicant has to appear only once in person (one-stop-shop principle) in order to obtain a visa.*

Amendment 7  
RECITAL 9

(9) *To ensure the compliance with data protection the working group created by Article 29 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the European Data Protection Supervisor have been consulted.*

(9) *The European Data Protection Supervisor has issued an opinion in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>1</sup> and the Article 29 Working Party in accordance with Article 30(1)(c) of Directive 95/46/EC.*

<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

Amendment 8  
RECITAL 9 A (new)

***(9a) Directive 95/46/EC applies to the processing of personal data in application of this Regulation. However, certain points should be clarified, in particular in respect of the responsibility for the processing of data, of safeguarding the rights of the data subjects and of the supervision of data protection.***

Amendment 9  
RECITAL 11

(11) In order to facilitate the procedure of any subsequent application, it should be possible to copy biometric data from the first application within a period of **48 months** ***in accordance with*** the retention period ***laid down in*** the VIS Regulation. Once this period of time has elapsed, the biometric identifiers should be captured again.

(11) In order to facilitate the procedure of any subsequent application, it should be possible to copy biometric data from the first application within a period of **59 months** ***from the start of*** the retention period ***provided for in Article 23 of*** the VIS Regulation. Once this period of time has elapsed, the biometric identifiers should be captured again.

Amendment 10  
RECITAL 14

(14) The Commission should present a report on the implementation of this Regulation ***two*** years after ***its entry into force***, covering the implementation of the enrolment of biometric identifiers, the principle of the “first application” and the organisation of the reception and the processing of visa applications.

(14) The Commission should present a report on the implementation of this Regulation ***three*** years after ***the VIS is brought into operation and every four years thereafter***, covering the implementation of the enrolment of biometric identifiers, ***the appropriateness of the ICAO standard chosen, compliance with data protection rules, experience with external service providers with specific reference to the collection of biometric data***, the principle of the “first application” and the organisation of the reception and the processing of visa applications.

*The report should also include, on the basis of Article 17 (12), (13) and (14) and Article 50(4) of the VIS Regulation, the cases in which fingerprints could factually not be provided or were not required to be provided for legal reasons compared with the cases in which fingerprints are taken. The report should include information on cases in which a person who could factually not provide fingerprints was refused a visa.*

*The report should be accompanied, where necessary, by appropriate proposals to amend this Regulation. The Commission should transmit the report to the European Parliament and the Council.*

Amendment 11  
RECITAL 15

*(15) The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.* This Regulation does not go beyond what is necessary in order to achieve the objectives pursued *in accordance with the third paragraph of Article 5 of the Treaty.*

*(15) The objective of this Regulation is the organisation of the receipt and processing of visa applications in respect of the insertion of biometric data in the VIS. Since this objective cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.*

Amendment 12  
RECITAL 16

*(16) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing common standards and interoperable biometric identifiers to lay down rules for all Member States implementing the Schengen Convention. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.* *deleted*

Amendment 13  
RECITAL 16 A (new)

*(16a) This Regulation respects fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms, by the Charter of Fundamental Rights of the European Union and by the United Nations Convention on the Rights of the Child.*

Amendment 14  
ARTICLE 1, POINT 1, POINT (A)  
Point II, point 1.2., point (b) (CCI)

"A Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. The relevant provisions of 1.2 (c) and (e) shall apply. The reception and transmission of files and data to the represented consular post shall be carried out respecting the relevant data protection and security rules".

"A Member State may also represent one or more other Member States solely for the reception of applications and the enrolment of biometric identifiers. The relevant provisions of 1.2 (c) and (e) shall apply. ***Where it receives an application, the representing Member State shall create the application file in the VIS and insert the data referred to in Article 9 of the VIS Regulation. It shall then inform the consular post of the represented Member State of the application and the VIS entry through the VIS communication infrastructure as provided for in Article 16 of the VIS Regulation.*** The reception and transmission of files and data to the represented consular post shall be carried out respecting the relevant data protection and security rules".

Amendment 15  
ARTICLE 1, POINT 1 A (new)  
Point III, point -1 (new) (CCI)

***(1a) In Point III, point -1 shall be added:***

***"Conduct of staff involved in visa applications***

***Member States shall ensure that applicants are received courteously by all staff involved in visa applications.***

***All staff shall, in the performance of their duties, fully respect the human dignity and integrity of the applicant. Any measures taken shall be proportionate to the objectives pursued.***

***While performing their tasks, staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."***

Amendment 16  
ARTICLE 1, POINT 2  
Point III, point 1.1, paragraph 1 (CCI)

*Aliens* shall also be required to fill in the uniform visa form. Applications for a uniform visa must be made using the harmonised form a specimen of which is given in Annex 16.

*Applicants* shall also be required to fill in the uniform visa form. Applications for a uniform visa must be made using the harmonised form a specimen of which is given in Annex 16.

Amendment 17  
ARTICLE 1, POINT 2  
Point III, point 1.2, point (a) (CCI)

a) Member States shall collect biometric identifiers comprising the facial image and ten fingerprints from the applicant *in accordance with the safeguards* laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

a) Member States shall collect biometric identifiers comprising the facial image and ten fingerprints from the applicant *respecting the rights* laid down in the European 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.

At the moment of submission of his/her first visa application each applicant shall be required to appear in person. At that time the following biometric identifiers shall be collected:

At the moment of submission of his/her first visa application each applicant *not subject to any of the exceptions referred to in point (b)* shall be required to appear in person. At that time the following biometric identifiers shall be collected:

- a photograph, scanned or taken at the time of application and
- ten fingerprints taken flat and digitally captured.

- a photograph, scanned or taken at the time of application and

- ten fingerprints taken flat and digitally captured.

For any subsequent application the biometric identifiers shall be copied from the first application, *providing the last entry is not older than 48 months*. After this period a subsequent application is to be considered as a “first application”.

For any subsequent application, *within 59 months from the start of the retention period provided for in Article 23 of the VIS Regulation*, the biometric identifiers shall be copied from the first application. After this period a subsequent application is to be considered as a “first application”.

The technical requirements for the photograph and the fingerprints shall be in accordance with the international standards as set out in ICAO document 9303 part 1 (passports) 6th edition.

The biometric identifiers shall be taken by qualified and duly authorised staff of the diplomatic mission or consular post or, under their supervision, of the external service provider referred to in point 1.B.

The data shall be entered in the Visa Information System (VIS) only by duly authorised consular staff **according** to **Articles 4(1), Article 5 and Article 6(5) and (6)** of the VIS regulation.

The technical requirements for the photograph and the fingerprints shall be in accordance with the international standards as set out in ICAO document 9303 part 1 (passports) 6th edition.

The biometric identifiers shall be taken by qualified and duly authorised staff of the diplomatic mission or consular post or, under their supervision **and responsibility**, of the external service provider referred to in point 1.B.

The data shall be entered in the Visa Information System (VIS) only by duly authorised consular staff **referred to in Article 4(1), in accordance with Article 5** of the VIS regulation.

***Member States shall ensure that full use is made of all search criteria under Article 13 of the VIS Regulation in order to avoid false rejections and identifications.***

***The collection of biometric identifiers, including their transmission from the service provider to the responsible consular post, shall be supervised in accordance with Articles 41 and 43 of the VIS Regulation and Article 28 of Directive 95/46/EC.***

Amendment 18  
ARTICLE 1, POINT 2  
Point III, point 1.2, point (b) (CCI)

b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

– Children under the age of **6**;

b) Exceptions

The following applicants shall be exempt from the requirement to give fingerprints:

– Children under the age of **12**;

– Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken.

A Member State may provide for exceptions from the requirement of collecting biometric identifiers for holders of diplomatic passports, service/official passports and special passports.

In each of these cases an entry “not applicable” shall be introduced in the VIS.

*– Persons where fingerprinting is physically impossible. If, however, fingerprinting of less than ten fingers is possible, the respective number of fingerprints shall be taken. Member States shall ensure that appropriate procedures guaranteeing the dignity of the person concerned are in place in the event of there being difficulties in enrolling. They shall also ensure that the decision as to whether fingerprinting is impossible is always taken by the duly authorised staff of the diplomatic mission or consular post of the Member State(s). Furthermore, should the impossibility be temporary, the applicant shall be required to give fingerprints at the following application. Consular staff shall be entitled to ask for further clarification of the reasons for the temporary impossibility.*  
***The fact that fingerprinting is physically impossible shall not influence the grant or refusal of a visa.***

A Member State may provide for exceptions from the requirement of collecting biometric identifiers for holders of diplomatic passports, service/official passports and special passports.

In each of these cases an entry “not applicable” shall be introduced in the VIS.

***Without prejudice to the provisions of Point III.4, for persons under the age of 12, scanned photographs shall be used which do not require them to appear in person.***

*The exemption from the requirement to give fingerprints for children, and in particular the age range for the taking of fingerprints, shall be reviewed three years after the start of operation of the VIS. To this end the Commission shall present a report which shall in particular cover the experience of the VIS with regard to the taking and use of fingerprints from children aged 12 and over and a detailed technical assessment of the reliability of taking and using the fingerprints of children under the age of 12 for identification and verification purposes in a large-scale database such as the VIS. The report shall incorporate an extended impact assessment of lower and higher age limits for requiring fingerprints, including social, ergonomic and financial aspects.*

*The report shall make a similar assessment as regards the taking of fingerprints from the elderly. Should the report show significant problems with taking fingerprints of persons over a certain age, the Commission shall make a proposal to impose an upper age limit.*

*The report shall be accompanied, where necessary, by suitable proposals to amend this Regulation.*

Amendment 19  
ARTICLE 1, POINT 3  
Point VII, point 1 A, paragraph 2 (CCI)

For each location Member States shall either equip their consular office with the required material for capturing/collecting biometric identifiers or without prejudice to the above mentioned options of representation, decide to cooperate with one or more other Member States. Any cooperation shall take the form of co-location or the establishment of a Common Application Centre or co-operation with external service providers.

For each location Member States shall either equip their consular office with the required material for capturing/collecting biometric identifiers or without prejudice to the above mentioned options of representation, decide to cooperate with one or more other Member States. Any cooperation shall take the form of co-location or the establishment of a Common Application Centre or, ***where these are inappropriate***, co-operation with external service providers.

Amendment 20  
ARTICLE 1, POINT 3  
Point VII, point 1 A, paragraph 2, point (a) (CCI)

a) Where “co-location” is chosen, staff from the diplomatic posts and consular missions of one or more Member States process the applications (including biometric identifiers) addressed to them at the diplomatic post and consular mission of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration and conditions for the termination of the co-location as well as the part of the administrative fee to be received by the Member State whose diplomatic post or consular mission is being used.

a) Where “co-location” is chosen, staff from the diplomatic posts and consular missions of one or more Member States process the applications (including biometric identifiers) addressed to them at the diplomatic post and consular mission of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration and conditions for the termination of the co-location as well as the part of the administrative fee to be received by the Member State whose diplomatic post or consular mission is being used. ***Applicants shall be directed to the Member State responsible for the processing of the visa application.***

Amendment 21  
ARTICLE 1, POINT 3  
Point VII, point 1 A, paragraph 2, point (b) (CCI)

b) Where “Common Application Centres” are established, staff of diplomatic posts and consular missions of two or more Member States are pooled in one building in order to receive the visa applications (including biometric identifiers) addressed to them. Applicants shall be directed to the Member State responsible for the processing of the visa application. Member States shall agree on the duration and conditions for the termination of this co-operation as well as the cost sharing among the participating Member States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.

b) Where “Common Application Centres” are established, staff of diplomatic posts and consular missions of two or more Member States are pooled in ***the building of one Member State enjoying diplomatic or consular protection under international law or in a European Commission building recognised by the host State as inviolable*** in order to receive the visa applications (including biometric identifiers) addressed to them. Applicants shall be directed to the Member State responsible for the processing of the visa application. Member States shall agree on the duration and conditions for the termination of this co-operation as well as the cost sharing among the participating Member States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.

Amendment 22  
ARTICLE 1, POINT 3  
Point VII, point 1 B (CCI)

*Where for* reasons relating to the local situation of the consular post it is not appropriate to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre, a Member State or several Member States jointly may co-operate with an external service provider for the reception of visa applications (including biometric identifiers). In such a case, the Member State(s) concerned shall remain liable for compliance with data protection rules for the processing of visa applications.

*If, due to particular circumstances or* reasons relating to the local situation of the consular post, it is not appropriate to equip the consular office for capturing/collecting biometric identifiers or to organise co-location or a Common Application Centre, a Member State or several Member States jointly may co-operate with an external service provider for the reception of visa applications (including biometric identifiers). In such a case, the Member State(s) concerned shall remain ***responsible for the processing of the data and therefore liable for any breaches of contract and in particular*** for compliance with data protection rules for the processing of visa applications. ***Those Member State(s) shall ensure that an external service provider under Point VII, point 1.B.1b undertakes its activities on the premises of a Member State which enjoy diplomatic or consular protection under international law or on European Commission premises recognised by the host state as inviolable and that qualified and duly authorised staff of the diplomatic mission or consular post of the Member State(s) are present to closely supervise the activities of the external service providers.***

Amendment 23  
ARTICLE 1, POINT 3  
Point VII, point 1.B.1 point (b) (CCI)

b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12) **and** transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application.

b) the external service provider provides general information on the requirements for applying for a visa, collects applications, supporting documents and biometric data from visa applicants and collects the handling fee (as provided for by Part VII, point 4 and Annex 12), transmits completed files and data to the diplomatic mission or consular post of the Member State competent for the processing of the application **and returns the passport to the applicant or to a legal representative at the end of the procedure.**

Amendment 24  
ARTICLE 1, POINT 3  
Point VII, point 1.B.2 (CCI)

1.B.2 - Obligations of Member States

The Member State(s) concerned shall select an external service provider **who** is able to ensure all the technical and organisational security measures **and appropriate technical and organizational measures requested by the Member State(s)** to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the reception and transmission of files and data to the consular post, and against all other unlawful forms of processing.

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts and shall ensure there is no conflict of interests.

1.B.2 - Obligations of Member States

**In compliance with Directive 95/46/EC, the** Member State(s) concerned shall select an external service provider **which** is able to ensure **a high quality of service and** all the technical and organisational security measures **necessary** to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network as well as the reception and transmission of files and data to the consular post, and against all other unlawful forms of processing.

When selecting external service providers, Member States' diplomatic missions or consular posts shall scrutinise the solvency and reliability of the company (including necessary licences, commercial registration, company statutes, bank contracts) and shall ensure there is no conflict of interests.

***The diplomatic missions or consular posts of the Member States shall ensure that the company selected offers relevant professional expertise in information assurance and data security. Member States should follow best procurement practices in contracting external visa support services.***

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts.

External service providers shall not have access to the Visa Information System (VIS) for any purpose. Access to the VIS shall be reserved exclusively to duly authorised staff of diplomatic missions or consular posts ***solely for the purposes laid down in the VIS Regulation.***

The Member State(s) concerned shall conclude a contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall ***within local consular cooperation inform*** the diplomatic missions and consular posts of other Member States and the Commission delegation ***why the contract is necessary.***

The Member State(s) concerned shall conclude a ***written*** contract with the external service provider in accordance with Article 17 of Directive 95/46. Before concluding such a contract, the diplomatic mission or consular post of the Member State concerned shall ***justify, with reasons in accordance with Point VII, point 1.B, the need for the contract with*** the diplomatic missions and consular posts of other Member States and the Commission delegation ***within local consular cooperation.***

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

- a) define the exact responsibilities of the service provider;
- b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;

In addition to the obligations set out in Article 17 of Directive 95/46, the contract shall also contain provisions which:

- a) define the exact responsibilities of the service provider;
- b) require the service provider to act under the instructions of the responsible Member States and to process the data only for the purposes of processing of personal data of visa applications on behalf of the responsible Member States in compliance with Directive 95/46;

c) require the service provider to provide the applicants with the information required under Regulation ..... *[draft VIS regulation]*;

d) provide for access by consular staff to the premises of the service provider at all times;

e) require the service provider to observe rules of confidentiality *(including the protection of the data collected in relation to visa applications)*;

c) require the service provider to provide the applicants with the information required under *Article 37 of the VIS Regulation*;

*ca) require the service provider to ensure that its staff are appropriately trained and respects the rules laid down in Point III, point -1;*

*cb) require the service provider to adopt appropriate anti-corruption measures;*

*cc) require the service provider to report to the responsible Member State without delay any security breaches or any other problems;*

*cd) require the service provider to record any complaints or notifications from applicants on data misuse or unauthorised access. The external service provider shall inform the responsible Member State's diplomatic mission or consular post without delay and coordinate with them in order to find a solution. Complaints should be handled in such a way so as to ensure that explanatory responses are given to visa applicants promptly;*

d) provide for access by consular staff to the premises of the service provider at all times;

e) require the service provider *and its staff* to observe rules of confidentiality *which shall also apply once the staff have left the employ of the external service provider or after the suspension or termination of the contract*;

*ea) ensure data protection compliance, including reporting obligations, external audits, regular spot checks by, inter alia, national data protection authorities and that mechanisms are in place for the apportionment of the liability of a contractor in the event of a breach of the regulations on privacy, including the obligation to compensate individuals where they have suffered damage resulting from an act or omission of the service provider;*

*eb) require the service provider to transmit without delay the completed file to the diplomatic mission or consular post of the Member State responsible for the processing of the application and not to copy, store, or otherwise retain any data collected after the transmission;*

*ec) require the service provider to prevent any unauthorised reading, copying, modification or deletion of visa data during the transmission from the service provider to the diplomatic mission or consular post of the Member State responsible for the processing of the application, in particular by means of appropriate encryption techniques;*

f) contain a suspension and termination clause.

f) contain a suspension and termination clause;

*fa) contain a revision clause with a view to ensuring that contracts reflect best current practices;*

*fb) lay down rules on the conduct of the staff responsible for handling visa applications and for collecting biometric data with maximum respect for human dignity. Any measure taken when carrying out those duties must be proportionate to the aims of that measure. In processing the application, staff shall avoid any discrimination among persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*

*A model contract shall be established within local consular cooperation.*

*Member States shall ensure that there is the least possible service disruption for visa applicants in the event of the external service provider suddenly ceasing to provide the services required under the contract.*

The Member State(s) concerned shall monitor implementation of the contract, including:

- a) the general information provided by the service provider to visa applicants;
- b) the technical and organisational security measures and appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing as well as the reception and transmission of files and data to the consular post;
- c) the capturing of biometric identifiers;

The Member State(s) concerned shall *cooperate closely with the external service provider and shall closely* monitor the implementation of the contract, including:

- a) the general information provided by the service provider to visa applicants;
- b) the technical and organisational security measures and appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing as well as the reception and transmission of files and data to the *diplomatic mission* or consular post;
- c) the capturing *and transmission* of biometric identifiers;

d) the measures taken to ensure compliance with data protection provisions.

***The total amount of fees charged by the external service provider for processing the visa application shall not exceed the fee set out in annex 12.***

The consular staff of the Member State(s) concerned shall give training to the service provider, corresponding to the knowledge needed to offer appropriate service and sufficient information to visa applicants.

d) the measures taken to ensure compliance with data protection ***and data security*** provisions ***as well as measures against corruption.***

***The fee paid by the applicant shall not exceed the fee set out in annex 12 irrespective of whether Member States cooperate with external service providers.***

***Member States shall ensure that a procedure is in place allowing for the identification of the external service provider handling any visa application.***

The consular staff of the Member State(s) concerned shall give training to the service provider, corresponding to the knowledge needed to offer appropriate service and sufficient information to visa applicants.

Amendment 25  
ARTICLE 1, POINT 3  
Point VII, point 1.B.5 (CCI)

1.B.5 - Information

***Precise information on the means of obtaining an appointment and submitting a visa application shall be displayed by Member States' diplomatic missions and consular posts for the general public.***

1.B.5 - Information

***Member States and their diplomatic missions or consular posts shall provide the general public with all relevant information in relation to a visa application, including:***

***(a) the criteria, conditions and procedures for applying for a visa;***

***(b) the means of obtaining an appointment, if applicable;***

***(c) where the application should be submitted (competent diplomatic mission or consular post, common application centre or external service provider).***

***This information to the general public shall also be available through a common Schengen visa internet site.***

*The latter shall be established in order to further support the application of the common visa policy and the handling of the visa procedure.*

Amendment 26  
ARTICLE 1, POINT 3  
Point VII, point 1.B.6 (new) (CCI)

***1.B.6 - Information Campaign***

***Shortly before the VIS is brought into operation in a third country, the diplomatic missions or consular posts of Member States together with the delegation of the Commission shall launch a campaign informing the general public about the objectives pursued, the data stored in, and the authorities having access to, the VIS, and the rights of visa applicants. Such campaigns shall be conducted regularly.***

Amendment 27  
ARTICLE 1, POINT 3  
Point VII, point 1.D, paragraph 1 (CCI)

Member States shall inform the Commission of how they intend to organise the reception and processing of visa applications in each consular location. The Commission will ensure appropriate publication.

Member States shall inform the Commission of how they intend to organise the reception and processing of visa applications in each consular location. The Commission will ensure appropriate publication ***on the common Schengen visa internet site.***

***1.E General responsibilities***

***1.E.1 Documents***

***Any document, data or biometric identifier received by, or on behalf of, a Member State in the course of a visa application shall be considered a 'consular document' under the Vienna Convention on Consular Relations and shall be treated in an appropriate manner.***

***1.E.2 Training***

***Before being authorised to take biometric identifiers, the staff of the diplomatic mission or consular point shall receive appropriate training so as to ensure smooth and professional enrolment.***

***1.E.3 Liability***

***Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act in breach of this Regulation shall be entitled to receive compensation from the Member State which is responsible for the damage suffered. That Member State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.***

***Claims for compensation against a Member State for the damage referred to in the previous subparagraph shall be governed by the provisions of national law of the defendant Member State.***

***1.E.4 Penalties***

*Member States shall take the necessary measures to ensure that any breach of this Regulation, in particular any misuse of data submitted for a visa application is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.*

Amendment 29  
ARTICLE 2

The Commission shall present a report to the European Parliament and to the Council on the implementation of *the present regulation two years after its entry into force.*

The Commission shall present, *three years after the VIS is brought into operation and every four years thereafter*, a report to the European Parliament and to the Council on the implementation of *this Regulation, including the implementation of the enrolment of biometric identifiers, the appropriateness of the ICAO standard chosen, compliance with data protection rules, experience with external service providers with specific reference to the collection of biometric data, the principle of the “first application” and the organisation of the reception and the processing of visa applications. The report shall also include, on the basis of Article 17 (12), (13) and (14) and of Article 50(4) of the VIS Regulation, the cases in which fingerprints could factually not be provided or were not required to be provided for legal reasons compared with the number of cases in which fingerprints are taken. The report shall include information on cases in which a person who could factually not provide fingerprints was refused a visa. The report shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.*