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VISA 51
ASILE 4
COMIX 96

NOTE

From: General Secretariat of the Council
To: Visa Working Party
Subject: Use of the VIS with a view to handling asylum cases

Delegations will find attached a document submitted by the Services of the Commission.

Background

In the Visa WP of 19 June 2014, SE raised a point on the link between Schengen visas issued by Member States and the flows of asylum seekers. SE expressed concerns over the use of Schengen visas in order to access EU territory in view of lodging applications for international protection. SE noted the link between the identification of asylum seekers in the VIS database and implications for the Dublin system, and deplored the lack of harmonization between MS in the application of the Visa Code, which may result in costly procedures for other MS where asylum seekers end up applying for protection.

The eu-LISA report on the use of the VIS for the period 2012-2013 shows that until August 2013 (latest available data for this report) only nine MS were using the VIS with the purpose of determining the MS responsible for examining an asylum application¹.

The issue was subsequently discussed in the Visa WP of 13-14 October 2014 under the topic "Use of the VIS with a view to handling the asylum cases". By that time, only 5 Schengen States had reacted following the SE intervention – NO, CH, NL, DE, CZ. COM asked all other Schengen states to contribute to the debate on this issue on the basis of a questionnaire presented by the COM in that meeting and subsequently circulated by the General Secretariat of the Council (CSG).

This paper represents a summary of the findings based on the data submitted by the MS, accompanied by some comments.

Methodological point

Although all MS received the same questionnaire, the data submitted vary substantively, both in terms of quality/degree of accuracy and quantity. This is due to the fact that the questionnaire had an ad-hoc basis and no specific legal basis exists that requires MS to collect such data systematically and on the basis of the same criteria. Thus, according to availability, some MS submitted data for 2013, for 2014, for both or for parts of 2013 or 2014 (none going further than August 2014).

Related to that, it should be kept in mind that by August 2014 only around 25% of the worldwide visa applications have been introduced in the VIS, corresponding to countries of Africa, the Near East including the occupied Palestinian territory, the Gulf region, the Americas and the Caribbean, the Central and South-East Asia and Australasia (since then, Turkey and the Western Balkans were also rolled out in September 2014, but they are not part of the data reported to the COM). Thus, the nationals of main countries of origin for asylum seekers arriving in the EU such as Afghanistan, Iran, Iraq or Syria could be traced in the VIS, while nationals of Pakistan or Kosovo cannot.

Also, some basic data have been provided (ex. number of VIS hits) but the MS was not able to provide the number of asylum applications for the same period. Where that data were available in the Eurostat database, this was used on a proportional basis for that period.

¹ Two of them, HU and FI, have not yet provided any information to COM, while BE, unlike what is stated in the eu-LISA report, informed the COM that it only partly checks against the VIS, i.e. on the basis of the identity that the person provides (which may be false and in any case not stored in Eurodac) and not on the basis of fingerprinting.

In order to achieve a higher degree of accuracy of the data, supplementary information was requested from the MS:

- VIS hits corresponding to visas actually issued, not just applied for (the latter could not lead to responsibility being requested to another MS on the basis of the Dublin Reg);
- VIS hits corresponding to visas still valid at the time of applying for asylum in a MS or which have expired less than 6 months previously (and which would allow a Dublin responsibility request to be sent to another MS);
- VIS hits corresponding to visas issued by the same MS where the person later on applied for asylum (thus indicating whether third country nationals tend to apply for visa directly with the MS where he/she later on intends to apply for asylum, as well as whether the MS who issued that visa should be responsible for examining the application for asylum or not).
- Distinguishing between visas issued by MS on their own behalf and visas issued on behalf of another MS (which has consequences over the Dublin responsibility determination)².

MS were only able to respond to these requests in a limited manner, due to lack of pre-existing legal bases for collecting such information (as explained above) and sometimes to the lack of infrastructure at national level (i.e. they do not have a system in place allowing to collect such data). Therefore, the findings were approximated to the most reasonable extent possible. However, the figures thus obtained allow identifying general trends and illustrating a general picture of the phenomenon of third country nationals arriving on EU territory using a Schengen visa and who subsequently ask for asylum.

Main findings:

The scope of the phenomenon:

I. The Schengen countries with the highest occurrence of asylum seekers accessing the EU territory with a Schengen visa (established on the basis of a VIS hit):

The situation of asylum seekers accessing EU territory with the help of a Schengen visa seems to be an issue only for CZ, DE, LX, NL, NO, SE and CH, though percentages vary. The highest value is presented by CZ (34% for the first 3 quarters of 2014), which seems to be rather exceptional. Most of the other countries have figures between around 5% -7%.

Comments: In general, these percentages tend to correspond to a 'normal' distribution pattern for asylum seekers, whereby the vast majority comes through land borders irregularly, some have (or have had) a visa or residence document/long stay visa for a MS.

² Only SE and NO were able to provide such data.

1. SE (almost 5% in 2013 and above 7% in 2014³ of asylum seekers lodging their application in SE had accessed the EU territory using a Schengen visa)

In 2013, 9.4% of these VIS hits corresponded to visas issued by SE, and 9.5% in 2014.

Out of the total number of VIS hits corresponding to visas issued by another MS than SE, the percentage of asylum seekers accessing the territory with a Schengen visa that was valid at the time of lodging the asylum application or had expired less than 6 months previously and for which SE can ask another MS to assume the responsibility for examining the asylum application was 4,37% (out of the 5%) in 2013 and 6,68% (out of the 7%) in 2014.

Thus 0,44% of the total number of asylum seekers lodging an application in SE in 2013, and 0,47% of the total number of asylum seekers lodging an application in SE in 2014, and who arrived there with a Schengen visa issued by another MS than SE and which had expired more than 6 months previously, were cases in respect of whom a request could not be sent to another MS to become responsible for that asylum seeker.

2. NO (around 6% from Jan to Oct 2014 of asylum seekers lodging their application in NO had accessed the EU territory using a Schengen visa)

Roughly 13% of these VIS hits corresponded to visas issued by NO.

NO does not collect data allowing it to establish the percentage of asylum seekers accessing the territory with a Schengen visa that was valid at the time of lodging the asylum application or had expired less than 6 months previously.

Only one visa has been issued to an asylum seeker by another Schengen country's mission representing Norway.

3. CH (almost 5% in 2013, and almost 10% in 1st quarter 2014, of asylum seekers lodging their application in CH had accessed the EU territory using a Schengen visa⁴)

36,5% of all such cases concern visas issued by CH, while in the case of Syrians (the main country of origin for the asylum seekers arriving in CH), the percentage goes up to 86% (in 2013) and 97.4% (in 2014).

In 2013, almost 97% of the asylum seekers identified with a VIS hit could be Dublin-claimed to another Member State.

³ Results are calculated by COM on the basis of figures submitted by SE; only VIS hits linked to a visa actually issued were taken into account.

⁴ The 2013 figures have been refined to reflect VIS hits related to visas actually issued. For 2014, this remains unclear.

4. NL (4% from Jan 2013 to Aug 2014⁵)

NL has no available information on the percentage of these hits corresponding to visas issued by NL itself, nor about the percentage of these visas valid at the time of lodging the asylum application or expired less than 6 months previously.

NL does not currently collect/compile data on the locations where the visas concerned by this situation were issued.

5. DE (2.6% from Jan – Aug 2014⁶)

13% of these asylum seekers arrive with Schengen visas issued by DE itself (which is thus placed as no 4 in the top of MS issuing most visas used to apply for asylum in DE).

DE figures are not disaggregated in “valid visas” or “expired visas”. In the context of asylum procedure DE makes no disaggregation of data based on the validity of the visa⁷.

Data about visas issued in third countries on behalf of Germany are not available.

6. CZ (34% from Jan – Aug 2014)

CZ figures are not disaggregated in “valid visas” or “expired visas”.

All visas were valid or expired less than 6 months previously, thus allowing CZ to request another MS to assume responsibility for the examination of those asylum applications (Dublin claims).

Over 80% of asylum seekers in CZ arrived there with Schengen visas issued by CZ.

⁵ In NL, 1210 asylum seekers were identified by a VIS hit during January 2013-August 2014, out of 30,917 first asylum seeker applications during the same period.

⁶ DE did not submit data on the total number of asylum seekers that lodged their applications during the same period for which the VIS hits were reported. According to Eurostat, in 2014 DE received 202,815 asylum applications – data were therefore approximated for the period Jan-Aug to ¾ of the year, i.e. 152,111 applications. However, the result is likely to be distorted (i.e. to show a lower value than the real one) by the fact that Eurostat figures include "asylum and new asylum applicants", i.e. include applicants from previous reporting periods whose applications are still pending. Therefore they do not correspond to the asylum seekers having entered EU during the reporting period with a valid Schengen visa, but to a larger pool of asylum seekers. This enlarges the basis for calculus and may result in the overall percentage looking smaller than it actually is.

⁷ This fact has an impact on the statistics, as it distorts the figures as compared to SE or NO where this could be taken into account. It means that all VIS hits are interpreted as corresponding to valid issued visas, which is most likely not the case. This might indicate a higher rate of asylum seekers arriving in EU with a Schengen visa to apply for asylum than the reality, though the deviation percentage cannot be known.

7. LX (5% from June – October 2014⁸)

52% of these asylum seekers arrived with Schengen visas issued by LX itself.

40% of the Schengen visas concerned were issued by another Schengen state on behalf of LX.

72% of these visas were valid at the time of lodging the asylum application or have expired less than six months previously, thus allowing LX to request another MS to assume responsibility for the examination of those asylum applications (Dublin claims).

8. AT (unable to provide specific information due to set up of infrastructure due to existence of multiple databases which do not enable it to identify whether a hit is originated from VIS or another database)

⁸ Figures are though very low: 505 asylum applications, 25 VIS hits for asylum purposes.

II. The top 5 consulates/countries where visas have been issued for third country nationals who have subsequently applied for asylum on the territory of the EU Member States

Beirut, Teheran, Abu Dhabi, Addis Ababa and Tripoli seem to be the locations where most often visas are issued and subsequently used to apply for asylum.

Member State/ Location ⁹	1	2	3	4	5	6	7	8	9	10
Sweden ¹⁰	Beirut	Teheran	Abu Dhabi	Tripoli	Amman	Riyadh	Dubai	Jeddah	Doha	Cairo
Norway	Addis Ababa	Khartoum	Kampala	Lagos	Beirut	Tripoli	Riyadh	Baghdad	Teheran	Tunis
Switzerland	Beirut	Tunis	Lagos	Teheran	Cairo	Addis Ababa	Conakry	Kinshasa	Tripoli	Riyadh
The Netherlands	Info not available									
Germany ¹¹	Somalia	Libya	Guinea	Afghanistan	Algeria	Lebanon	Nigeria	Iraq	Syria	Iran
Austria	Info not available									
Czech Republic	Info not available									
Luxembourg	Kiev	Abu Dhabi	Cotonou	Teheran	Abuja	Algiers	Tunis	Yaoundé	Tbilisi	Sana'a

⁹ Based on 2013 figures submitted by MS (2013 was chosen because of prevalence of data (only one MS submitted info for 2014, which was considered insufficient to draw conclusions)

¹⁰ SE is not present in Libya, Lebanon or Eritrea, while in Iraq it is only processing applications from holders of diplomatic and official passports. This is important since these four countries of origin seem to provide the top 4 nationalities of asylum seekers in SE. SE is represented by IT in Lebanon and Eritrea and by DE in Libya.

¹¹ Data on the locations where the visas used by asylum seekers were issued were not provided, instead the top 10 nationalities of persons applying for asylum in DE and who have reached EU territory with the help of a Schengen visa were provided.

III. The top 5 Member States issuing the visas used by the asylum seekers to access EU territory¹²

Most of the visas used by asylum seekers to reach the EU have been issued by the following MS: **Italy, France, Spain** (common to SE, NL, CH, NO, DE)¹³:

- For SE¹⁴ these are (in order): EL, IT, ES, FR and SE.
- For NO these are (in order): IT, FR, ES, DE and NO.
- For CH these are (in order): CH, FR, IT, ES, DE, and MT.
- For NL these are (in order): FR, ES, IT, DE and MT (equality).
- For DE these are (in order): IT, ES, FR, DE and PL.
- For CZ these are (in order): CZ (overwhelming proportion), EL, PL, HU, LT.

Comments: This finding seems in line with the general patterns of statistics on visa applications, as the first three countries are the ones which attract most visa applications in EU.

Notably, in each of the above cases (except NL) the MS receiving the asylum seekers is also in top 5 of the Schengen states issuing the visa that allowed these asylum seekers to access the EU territory. This seems to indicate that, where they can, asylum seekers tend to apply for a visa directly to the MS where they intend to claim asylum.

IV. The top 3 nationalities of the asylum seekers entering the territories of the MS with Schengen visas

The prevalent nationalities of these asylum seekers identified with a VIS hit vary significantly among the MS that submitted the data, except for **Syrians** which are almost always at the top:

- SE: Syrians, Libyans, Iranians, Lebanese and Eritreans.
- NO: Eritreans, Sudanese, Iranians, Iraqis, and Ethiopians.
- CH: Syrians, Algerians, Nigerians, Tunisian, Libyans and Eritreans.
- NL: Iranians, Syrians, Iraqis, Libyans and Sudanese.
- DE: Lebanese, Iranians, Libyans, Algerians and Guineans.
- CZ: Ukrainians, Syrians, Cubans, others (not specified).

¹² It is assumed that MS did not report under 'visas issued by another MS' those visas that were issued on its behalf, under representation agreements.

¹³ For each of these Schengen states, the indications are given for a different reference period, e.g. for SE this is January to April 2014, for DE is 2013, for CH is 2013 and the first quarter of 2014 etc. Overall, the trend could be considered relevant enough to offer an accurate perspective over this situation.

¹⁴ The MT case: the SE contribution indicated that, for the particular case of Tripoli, during 2013 and increasingly throughout 2014, MT was the MS generating most visas used by asylum seekers to access the SE territory. Most of these asylum seekers are Libyan nationals but there are also nationals of Algeria, Egypt and Syria. It must be noted that SE is neither present, nor represented in Libya.

Comments: Again, this pattern seems to be positively correlated with the distribution pattern of asylum applicants, whereby these countries of origin are at the top of third countries of origin for asylum seekers reaching the EU.

V. Member States' problems in receiving acceptance for Dublin cases based on VIS hits

All MS who responded to COM's questionnaire and who use the VIS for asylum/Dublin purposes have stated that there are no great difficulties in obtaining acceptances based on VIS-hits (NO indicates 9% denial rate for Dublin requests based on VIS, CH less than 5%).

Final observations

SE's concerns seem to be based on the assessment that this phenomenon is disproportionate and even abusive (i.e. third country nationals who end up requesting asylum in EU should not have obtained a Schengen visa in the first place). SE furthermore clarified that it considers the Dublin process only a partial solution to this issue, given its length in time and the significant costs for the MS transferring the asylum seeker.

After analyzing the data submitted by the MS, the following observations can be made:

- The phenomenon of asylum seekers arriving on EU territory with the help of a Schengen visa seems to fall within 'normal' parameters, whereby the vast majority of asylum seekers comes in irregularly (including by sea or land borders, with forged documents or no documents etc.) and a small minority with the help of a valid Schengen visa or residence document/long stay visa for a MS.
- As regards the asylum seekers having accessed the EU territory with a Schengen visa, we can distinguish between three main categories:
 1. **Persons accessing the EU territory on the basis of a Schengen visa issued by one MS and who apply for asylum in a that same MS** (percentages vary hugely among the reporting MS, between approx. 10% in the case of SE to 50% in the case of LX and 80% in the case of CZ). This category covers asylum seekers that seek to obtain a permission to enter the EU territory directly from the MS with whom they intend to apply for asylum.

From a Dublin perspective and in the lack of superior Dublin criteria, such as family considerations, it is the responsibility of the MS issuing the Schengen visa and where the person applied for asylum to examine the asylum application. Therefore, in this scenario, no Dublin claim can be established towards another MS.

For this category, we assume there is no complaint from the MS in the way the visa procedure is applied, as the visa has been granted by their own consular services.

2. Persons accessing the EU territory on the basis of a Schengen visa issued by one MS acting in representation of another MS, and who later apply for asylum in the territory of the represented MS.

Very few data are available on this phenomenon, as most MS do not keep track of such cases.

The same observation as with the previous category applies, whereby the intention of the future asylum seeker was to apply for a visa with the MS where he/she intends to ask for asylum, but which is not present on that location other than through the services of the representing MS. The name of the MS on behalf of which the visa has been issued is clearly marked on the visa sticker and can help establish the responsibility for examining the asylum application, pursuant to the Dublin Regulation.

Should a MS consider that its representation arrangements have been inappropriately used by the representing MS, for example because this MS issues visas on its behalf too leniently, it could reconsider the representation agreement.

3. Persons accessing the EU territory on the basis of a Schengen visa issued by one MS and who apply for asylum in another MS.

Where, according to the data available in the VIS, the MS where the asylum application was lodged, establishes that the VIS hit corresponds to a visa issued by another MS, which is still valid at the time of lodging the asylum application or less than six months previously, and which actually enabled that person to access the EU territory, a Dublin request can be sent to the MS having issued that visa asking it to assume responsibility for examining the asylum application.

- On the basis of the evidence submitted, it cannot be established that the phenomenon of accessing the EU territory with the help of a Schengen visa in view of applying for asylum is due to the wrong assessment of the merits of the visa application, or to an insufficient or in-depth examination of the legitimate purpose of the travel and the will to return by the consular services of the MS. The process of examining a visa application allows a margin of discretion to the consul, which may lead in reality to different outcomes given to the same application by different consuls. The fact that out of those asylum seekers who have entered the territory of the Member States with a visa an important percentage applied for asylum in the same MS as the one which has issued the visa confirms this.

Summary of the information provided by the Member States in response to point 3 of Visa WP/Comix of 14 October 2014

MS Answer (Y/N)	AT	BE	CZ	DK	EE	FI	FR	DE	EL	HU	IC	IT	LV	LI	LT	LX	MT	NL	NO	PL	PT	SK	SI	ES	SE	CH	
Answer Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Use of VIS for asylum purposes (Y/N)	Y	Partially (id-Fing -N)	Y	N	N																						
Comments	Not able to give further info due to set-up of their infrastructure																										

Overview of the use of the VIS for asylum purposes:

- 2 Schengen states out of 26 have not responded to the query by the date of this presenting this summary.
- out of 24 MS that answered, 14 are not using the VIS with a view to handling the asylum cases. 5 of them intend, however, to do so in the future, one mentioned already launching it in 2015.
- 9 Schengen states are using the VIS for asylum purposes. This appears fully consistent with the eu-LISA evaluation as of August 2013¹ (which means not many MS have progressed since in setting up VIS facilities for asylum purposes).

¹ "Report on the technical functioning of VIS, including the security thereof, pursuant to Article 50(3) of the VIS Regulation", presented to the COM in April 2014