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REPORT

on the Commission proposal for a Council decision establishing the Visa Information System (VIS)
(COM2004) 99 – C5-0098/2004 – 2004/0029(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Carlos Coelho

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 23 February 2004 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the Commission proposal for a Council decision establishing the Visa Information System (VIS) (COM2004) 99 – 2004/0029(CNS)).

At the sitting of 25 February 2004 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Budgets for its opinion (C5-0098/2004).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Carlos Coelho rapporteur at its meeting of 17 March 2004.

The committee considered the Commission proposal and draft report at its meetings of 17 March and 6 April 2004.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Johanna L.A. Boogerd-Quaak (vice-chairman), Mary Elizabeth Banotti, Regina Bastos (for Carlos Coelho (rapporteur), pursuant to Rule 153(2)), Maria Berger (for Gerhard Schmid), Christian Ulrik von Boetticher, Marco Cappato (for Mario Borghezio), Michael Cashman, Carmen Cerdeira Morterero, Ozan Ceyhun, Gérard M.J. Deprez, Antonio Di Pietro (for Francesco Rutelli), Rosa M. Díez González (for Sérgio Sousa Pinto), Marie-Thérèse Hermange (for Bernd Posselt), Sylvia-Yvonne Kaufmann (for Ole Krarup), Margot Keßler, Heinz Kindermann (for Martin Schulz, pursuant to Rule 153(2)), Timothy Kirkhope, Eva Klant, Ole Krarup, Jean Lambert (for Alima Boumediene-Thiery), Lucio Manisco (for Giuseppe Di Lello Finuoli), Manuel Medina Ortega (for Robert J.E. Evans), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Hubert Pirker, Martine Roure, Heide Rühle, Ilka Schröder, Ole Sørensen (for Baroness Ludford), Patsy Sørensen, The Earl of Stockton (for Giacomo Santini), Joke Swiebel, Anna Terrón i Cusi, Maurizio Turco and Ian Twinn.

The opinion of the Committee on Budgets is attached.

The report was tabled on 7 April 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Commission proposal for a Council decision establishing the Visa Information System (VIS)

(COM2004) 99 – C5-0098/2004 – 2004/0029(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2004) 99)¹,
 - having regard to Article 66 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0098/2004),
 - having regard to the Protocol integrating the Schengen acquis into the framework of the European Union, pursuant to which the Council consulted Parliament,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Budgets (A5-0262/2004),
1. Rejects the Commission proposal;
 2. Calls on the Commission to withdraw its proposal and submit a new one;
 3. Instructs the President to forward its position to the Council and Commission.

¹ Not yet published in the OJ.

EXPLANATORY STATEMENT

1. Visa Information System (VIS)

Following on from the SIS (Schengen Information System) and EURODAC, the VIS will be the third major information-technology-based system to be set up within the area of freedom, security and justice.

The VIS is proposed as 'a system for the exchange of Visa data between Member States'. Two main processes are identified in the proposal: the gathering of Visa data when a Visa is issued and consultation of those data (whenever such information is required) by the authorities responsible for carrying out checks at external borders (COM(2003) 771).

Since September 2001 both the JHA Council and the European Council have repeatedly called upon the Commission to set up such a system. In June 2002 the JHA Council adopted a set of guidelines on the VIS, according to which the latter is:

'a system for the exchange of Visa data between Member States which must meet the following objectives:

- (a) constitute an instrument to facilitate the fight against fraud, by improving exchanges of information between the Member States (at consular posts and at border crossing points) on visa applications and responses thereto;
- (b) contribute to the improvement of consular cooperation and to the exchange of information between central consular authorities;
- (c) facilitate checks that the carrier and the holder of the visa are the same person, at external border checkpoints or at immigration or police checkpoints;
- (d) contribute to the prevention of "visa shopping";
- (e) facilitate application of the Dublin Convention determining the State responsible for examining applications for asylum;
- (f) assist in the identification and documentation of undocumented illegals and simplify the administrative procedures for returning citizens of third countries;
- (g) contribute towards improving the administration of the common visa policy and towards internal security and to combating terrorism.'

On 19 February 2004 the Council took a decision concerning development of the VIS (including guidelines on the purpose thereof), the way in which it was to be introduced, the initial content thereof (alphanumeric data and photographs), the additional content to be included at future stages to be implemented at the end of 2007 (biometric data and digitalised documents), the structure and location of the system, access to data held on the system, the data-retention period and the operation of the system.

II. The current proposal

It is stated on page 2 of the proposal that 'the present proposal is aimed at allowing the development of the VIS to take place by means of Community financing as of 2004 and in accordance with the relevant provisions of the Treaty'. It is based on Article 66 of the EC Treaty [cooperation between the relevant departments of the administrations of the Member States in the areas covered by the Title concerned, as well as between those departments and the Commission], which provides for the consultation process and requires Council unanimity (a qualified majority with effect from 1 May 2004).

II.1 Relationship between this and other proposals

The two Commission proposals which amend Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals and Regulation (EC) No 1683/95 laying down a uniform format for visas (COM(2003) 558; Sørensen report) provide the legal basis for the introduction of two biometric identifiers (a digital photograph and two fingerprints) for both visas and residence permits. Once they are adopted, those two biometric identifiers will be included in the second stage of the VIS in accordance with the timetable laid down by the Council, 'if possible by the end of 2007'.

II.2 Other requisite proposals

The proposal under consideration here is little more than an 'empty box'. As the Commission itself says in its own document, 'since a political orientation by the Council is still required for basic elements of the VIS, a fully fledged proposal for a legal instrument concerning the establishment of the VIS will be presented at a later stage. Such a further legal instrument will define in particular the system and its operation, including the categories of data to be entered into the system, the purposes for which they are to be entered and the criteria for their entry, the rules concerning the content of VIS records, the rights of access for authorities to enter, update and consult the data and rules on the protection of personal data and its control' (page 2).

As mentioned above, those conclusions were adopted by the Council on 19 February 2004 (five days after the adoption of the Commission proposal under consideration).

III. Rapporteur's views

The rapporteur is unable to recommend approval of the Commission proposal and he therefore calls upon the Commission to withdraw its proposal. He considers that the Commission should submit a comprehensively based proposal to Parliament and the Council

without delay.

Pursuant to the changes which will come into effect on 1 May 2004, that new Commission proposal will have to be adopted in accordance with the co-decision procedure.

The current proposal (which serves to establish the VIS and enables it to be financed outside the Community budget) and the other proposal announced by the Commission (for the purpose of defining the system and the way in which it is to operate) are complementary and must be dealt with jointly. If something is to be financed, both the legislative authority and the budget authority need to know exactly what. In all finance-related proposals, what is being financed (and under what terms) must be made obvious. At the same time a given amount of funding must be specified (either in the legal text or in the programmes adopted by means of the co-decision procedure). These two issues cannot be divorced.

When the decision was taken on the proposal concerning the establishment of EURODAC (COM(1999) 260; Pirker report), both issues were dealt with. There was only one exception to the rule: namely, the Schengen Information System II (SIS II). However, that case involved further development of an existing system, but that is not the case here, since an entirely new system is being set up.

Now that the Council conclusions on the VIS (which the Commission was awaiting) have been adopted, the right conditions exist for the Commission to prepare its proposal. In addition to considerations relating to the advantages of the procedure in terms of legislative economy, there is honesty in the relationship with Parliament and also the desired degree of transparency.

This will also enable the Commission to update its forecasts regarding the funding required in order to enable the VIS to be set up. Those forecasts were initially based on the assumption that there would be a single source of alphanumeric information (ignoring biometric data, the need for which would subsequently be recognised by the Council).

This aspect is of crucial importance to the Commission. According to the document under consideration the costs associated with such data may account for approximately 90% of the total costs (see COM(2003) 771). Hence the current financial proposal can no longer be regarded as valid. However, the legislator requires a clear, specific financial framework¹.

Furthermore, if the proposal for the establishment of the VIS (including the financing thereof) were adopted by means of a codecision procedure and not merely by means of a consultation procedure, it would be possible to avoid any discussion on financing within the narrow context of the budget procedure². This was repeatedly called for by Parliament in connection with the budget procedure³.

¹ See also Art. 22 of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (Official Journal L 357, 31 December 2002, p. 1-71).

² Points 33 and 34 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure (Official Journal C 172, 18 June 1999, p. 1-22).

³ The following comment was inserted to budgetary line 18 08 03 Visa information system (VIS): 'The

Lastly, such a procedure would enable Parliament to hold a proper discussion on the proposal for establishment of the VIS and to assess the information which has not been made available by the Commission (in particular, the VIS feasibility study which Parliament has still not received officially, despite the fact that it was submitted to the Council in May 2003). It should also be borne in mind that, despite a number of announcements and scheduling for September 2003, the Commission submitted its proposal only two months before Parliament's final part-session.

The rapporteur therefore considers that Parliament must continue to cooperate fairly with the other institutions, as required under the terms of the Treaty. Hence a detailed, exhaustive and soundly based proposal must be submitted by the Commission without delay so that it can be assessed as quickly as possible (bearing in mind the use of the financial resources which are still in the reserve for 2004).

appropriation will not be released from the reserve until Parliament, the Council and the Commission have agreed on the legal basis for the legislative act to develop the Visa information system.' (Official Journal L 53, 23 February 2004, p. II/1001).

5 April 2004

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council decision establishing the Visa Information System (VIS)
(COM(2004) 99 – C5-0098/2004 – 2004/0029(CNS))

Draftsman: Juan Andrés Naranjo Escobar

PROCEDURE

The Committee on Budgets appointed Juan Andrés Naranjo Escobar draftsman at its meeting of 9 March 2004.

It considered the draft opinion at its meeting of 5 April 2004.

At that meeting it adopted the following amendments unanimously.

The following were present for the vote: Terence Wynn (chairman), Juan Andrés Naranjo Escobar (draftsman), Ioannis Averoff, Den Dover, Bárbara Dührkop Dührkop, Göran Färm, Salvador Garriga Polledo, Catherine Guy-Quint, Jutta D. Haug, Constanze Angela Krehl, John Joseph McCartin, Joaquim Píscarreta, Per Stenmarck, Ralf Walter, Brigitte Wenzel-Perillo, Armin Laschet (for James E.M. Elles), Paul Rübzig (for Markus Ferber) and Rijk van Dam (for Michel Raymond).

SHORT JUSTIFICATION

Introduction

According to the guidelines adopted by the Council on 13 June 2002, the Visa Information System (VIS) is a system for the exchange of visa data between Member States with the following objectives:

- to facilitate the fight against fraud, by improving exchanges of information on visa applications and responses thereto;
- to enable national authorities to check that the carrier and the holder of the visa are the same person;
- to contribute to the prevention of 'visa shopping';
- to facilitate the determination of the State responsible for examining applications for asylum;
- to assist in the identification of undocumented illegals and simplify the return of citizens of third countries;
- to contribute towards improving the administration of the common visa policy and towards internal security and to combating terrorism.

A feasibility study of the technical and financial aspects of the VIS has been performed and its conclusions were presented to the Council in May 2003. The study was not forwarded to the European Parliament. The only official information which our institution has received is that contained in the Commission communication to the Council and the European Parliament concerning 'Development of the Schengen Information System II and possible synergies with a future Visa Information System (VIS)'¹.

The aim of the proposal for a decision

The purpose of the present proposal for a decision is to give the Commission the requisite financial resources to launch the technical development of the VIS. It is based on Article 66 of the EC Treaty, which provides merely for *consultation of the European Parliament*.

The proposal does not provide any details of the structure and content of the system (i.e. how it is to operate, the data which will be stored in it, how they will be entered, rules on the content of VIS entries, rights of access and rules on protection of personal data). A decision on these questions is deferred until 'political orientation by the Council' is forthcoming. The Commission accordingly advocates 'the adoption in future of the necessary legislation establishing and describing in detail the operation and use of VIS'².

¹ COM(2003) 771.

² Point 3 in the Explanatory Memorandum accompanying the Commission's proposal.

Barely seven days after the Commission's adoption of the draft decision under consideration, the JHA Council adopted conclusions concerning the establishment of the Visa Information System¹, particularly its architecture and siting, substance, development, access arrangements, communication infrastructure and financing. In this context, the Council stated that, at a second stage, the biometric data of visa applicants should be entered in the VIS.

The Council went on to say that the VIS should therefore, from the outset, be designed in such a way that no major change would be necessary for this purpose². *It is proposed that this second stage should be operational before the end of 2007.*

Budgetary implications

The appropriations for the VIS in the 2004 budget (€ 5 m) were entered in the reserve pending an agreement between the three institutions on the legal basis for the system³. The adoption of the proposal for a Council decision would therefore enable the Commission to ask the budgetary authority to release the amount entered in the reserve.

As mentioned above, the proposal for a decision will be adopted under a procedure requiring Parliament only to be consulted. The financial statement attached to the proposal is therefore of a purely illustrative character. *It does not in any way bind the budgetary authority, which is free to determine the appropriations to be used to finance the system in the course of the annual procedure for the adoption of the budget.* However, it is clear that Parliament must at least take account of the Commission's estimates of the overall financial impact of the proposal under consideration.

The Commission's financial statement may be summarised as follows (€ m):

		2004	2005	2006	2007	2008	2009 and subsequent years
Operating appropriations	CA	5.000	11.000	14.000	8.000	8.000	8.000
	PA	2.500	8.000	12.500	11.000	8.000	8.000
Administrative appropriations	CA	0.404	1.615	1.615	1.615	1.615	1.615
	PA	0.404	1.615	1.615	1.615	1.615	1.615
Total	CA	5.404	12.615	15.615	9.615	9.615	9.615
	PA	2.904	9.615	14.115	12.615	9.615	9.615

The Commission indicates that the above figures differ from the initial estimates for the development of the VIS (€ 10 m for 2004, 15 m for 2005 and 20 m for 2006)⁴. This is because *no element of the biometric functionalities is included*. It should also be borne in mind that, in its Communication concerning 'Development of the Schengen Information System II and

¹ Document 5831/04 - p. 15 et seq.

² P. 18 of the Conclusions adopted by the Council.

³ See remarks on line 18 08 03.

⁴ COM(2003) 323 final, 3.6.2003.

possible synergies with a future Visa Information System (VIS)' (see above), the Commission had estimated that 'For implementing also biometrics and supporting documents functionalities, the investment costs for C-VIS and the N-VIS would be almost **157 million Euro** and the cost for operation could reach 35 million Euro a year for a solution based on a common technical platform with SIS II.'¹

Position of the draftsman

Your draftsman is in favour of the Commission proposal. He regrets that it does not take account, either in the legislative text or in the financial statement, of the guidelines recently issued by the Council of Ministers of Justice and Home Affairs, particularly regarding the entry of biometric data. It is clear that this proposal will have a major impact and could require the European Parliament to redefine its budgetary priorities. However, your draftsman considers that, in the light of the recent attacks, the Union should do everything possible to fight the threat of terrorism. In this context it is important to recall that the VIS would be an essential instrument in the fight against terrorism and organised crime, as the Commission stresses, referring to the guidelines adopted by the JHA Council on 13 June 2002: the VIS 'must meet the following objectives: (...) contribute towards improving the administration of the common visa policy and towards internal security and to combating terrorism'².

AMENDMENTS

The Committee on Budgets calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Draft legislative resolution

Amendment 1

Considers that the financial statement accompanying the Commission proposal is compatible with the ceiling for Heading 3 of the Financial Perspective only provided that existing policies are reprogrammed; calls on the Commission to report to the budgetary authority, no later than 1 May 2006, on the compatibility of the Visa Information System with the Financial Perspective for the period after 2006;

¹ COM(2003) 771, p. 30.

² See explanatory memorandum on the proposal for a decision, p. 4.

Proposal for a decision

Text proposed by the Commission¹

Amendments by Parliament

Amendment 2
Article 1 a (new)

1a. Financial provisions

1. The annual appropriations for the development, establishment and operation of the VIS shall be authorised by the budgetary authority within the limits of the Financial Perspective.

2. The Commission shall submit, no later than 31 May each year, an update of the financial statement relating to the VIS. This statement shall take particular account of the cost arising from the inclusion of biometric data in the system. It shall serve as a justification for the appropriations requested by the Commission in its Preliminary Draft Budget.

3. In the context of the 2007 budgetary procedure, the Commission shall report, by 1 May 2006, on the compatibility of the system with the Financial Perspective for the period after 2006. If appropriate, the budgetary authority shall take the necessary steps, as from the 2007 budget procedure, to ensure that the annual allocations are consistent with the new Financial Perspective.

Justification

Any legislative proposal which is not subject to the codecision procedure must include a clause drawing attention to the margin of discretion enjoyed by the budgetary authority under the budgetary procedure. In accordance with point 35 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure (OJ C 172, 18.6.1999), the Commission must update the financial statement when changes in relation to the initial version arise.

¹ Not yet published in OJ.