



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 March 2007**

**7351/07**

---

---

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

---

---

**LIMITE**

**TRANSLATION PROVIDED BY  
THE PRESIDENCY**

**VISA 88  
CODEC 217  
COMIX 269**

**NOTE**

---

from : Presidency  
to : Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee  
(EU-Iceland/Norway/Switzerland)

---

No. Cion prop. : 5093/05 VISA 1 CODEC 77 COMIX 5 + COR 1 (COM(2004) 835 final)

---

Subject : Draft Regulation of the European Parliament and of the Council concerning the  
Visa Information System (VIS) and the exchange of data between Member States  
on short-stay visas

---

**I. Introduction**

The draft of the VIS Regulation was last extensively discussed in the Visa Working Party on 8-9 January 2007. The outcome of the meeting was recorded in 5213/07 VISA 7 CODEC 25 COMIX 32. On 23 January and 26 February 2007 SCIFA discussed the non-discrimination clause (Art. 4 A in conjunction with recitals 10 and 10 A), access to data for verification at external border crossing points (Art. 16) and Cyprus' proposal to amend Art. 38(5). While agreement was reached on the non-discrimination clause (doc. 5970/07 VISA 4 CODEC 89 COMIX 134), no agreement could be achieved on Art. 16 and Art. 38(5).

The Presidency continued the technical trilogue with the European Parliament on 11 January 2007. The Presidency held basic policy discussions at the highest political level on the Regulation and the interplay with the third-pillar Decision and the Framework Decision on data protection on 14 February and 8 March 2007.

## **II. Scheduled open issues for SCIFA discussion**

On the basis of discussions with the European Parliament during the SCIFA meeting on 19-20 March 2007, the Presidency intends to address the following unresolved issues:

- Bridging clause (Art. 1B)
- Supplementary use of data for reporting and statistics (Art. 15 Para. 11 and 12)
- Keeping of VIS data (Art. 25 A)
- Communication of VIS data to third countries (Art. 25 B)
- Other open issues (Art. 23 Para. 8 and Art. 38 Para. 5)

### **1. Bridging Clause (Art. 1 B)**

At the moment, the bridging clause reads as follows (cf. doc. 5213/07 VISA 7 CODEC 25 COMIX 32):

#### ***Article 1B***

#### ***Availability of data for preventing and combating threats to the internal security and serious criminal offences***

- 1. During the period laid down in Article 20(1), the visa authorities shall retain data referred to in Articles 6 to 12 for consultation, in the course of their duties, by designated authorities responsible for internal security in a specific case where there are reasonable grounds, based on factual indications, to consider that consultation of VIS data will substantially contribute to the prevention, detection or investigation of any of the serious criminal offences as defined in Council decision concerning access for consultation of the Visa Information System (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.*

2. *The consultation mentioned in paragraph 1 shall be carried out in accordance with Council Decision concerning access for consultation of the Visa Information system (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, in strict compliance with the rules governing the protection of personal data.*
  
3. *This Regulation is without prejudice to the communication of information on any criminal activity, detected by the authorities referred to in article 4 in the course of their duties, to the authorities responsible for internal security for the purposes of preventing, investigating and prosecuting the related criminal offences.*

Taking into account the Austrian scrutiny reservation, the Article 36 Committee agreed on 15 February 2007<sup>1</sup> on the following version of Art. 5(1)(d) of the Council Decision concerning access for consultation of the Visa Information System (VIS) by the designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences:

#### **Article 5**

#### **Conditions for access to VIS data by designated authorities of Member States to which the VIS Regulation applies**

1. *Access to the VIS for consultation by designated authorities shall take place within the scope of their powers and if the following conditions are met:*  
(...)  
(d) *if there are reasonable grounds to consider that consultation of VIS data will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question;*

---

<sup>1</sup> 5456/1/07 CATS 4 ENFOPOL 7 EUROPOL 9 VISA 21 COMIX 59 REV 1.

The Presidency seeks to adapt the wording of the bridging clause to Article 5 of the decision on access in particular by deleting the phrase “based on factual indications” and by clarifying Europol’s rights to access according to Article 7 of the decision on access. The Presidency therefore proposes rewording Article 1B as follows:

1. *In accordance with the Council Decision concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, the designated authorities of Member States may access the data kept in the Visa Information System referred to in Articles 6 to 12 if there are reasonable grounds to consider that consultation of VIS data in a specific case will substantially contribute to the prevention, detection or investigation of any of the above-mentioned criminal offences. According to the Council Decision concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, Europol may access these VIS data. The provisions concerning the protection of personal data shall be strictly observed.*
2. *This Regulation is without prejudice to the communication of information on any criminal activity, detected by the authorities referred to in article 4 in the course of their duties, to the **responsible** authorities ~~responsible for internal security~~ for the purposes of preventing, investigating and prosecuting the related criminal offences.*

## **2. Supplementary use of data for reporting and statistics (Art. 15, Para. 11 and 12)**

Art. 15 sets out in which cases the responsible visa authorities can request data from the VIS for the purposes of compiling reports and statistics. The European Parliament's previous statements have expressed concerns that there may be discrimination against applicants where for reasons in fact and in law no fingerprints could be taken.

In accordance with Art. 40 Para. 4, the Commission is to present a general report three years after VIS starts operating. A secure statistical basis needs to be created to ensure that the concerns mentioned above can be appropriately evaluated in that report. For this reason, the Presidency suggests the following supplement to Art. 15:

### **Article 15**

#### **Use of data for reporting and statistics**

The competent visa authorities shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing the identification of individual applicants:

(1 to 10) unchanged

**(11) the cases of visa applications without the data specified in Art. 6 (6)**

**(12) the cases of visa applications without the data specified in Art. 6 (6) where a visa was refused.**

### **3. Keeping of VIS data (Art. 25 A)**

In its negotiations with the Council, the European Parliament has repeatedly emphasised that no unauthorised copies may be made of the VIS data. The Member States in the Visa Working Party meeting on 8/9 January 2007 rejected the wording suggested by the European Parliament for a new Art 25 A as too comprehensive and too vague.

However, the Presidency fully concurs with the European Parliament's intention of prohibiting any improper copies of the entire VIS data or parts of that data.

In this context, the following Art. 25 A is suggested:

**Article 25 A**

***Keeping of VIS data in national files***

- 1. Data retrieved from the VIS may be kept in national files only if and no longer than necessary in an individual case in accordance with the purpose of the VIS and in accordance with the relevant legal provisions including those concerning data protection.*
- 2. Paragraph 1 shall not prejudice the right of a Member State to keep in its national files data which that Member State entered in the VIS.*
- 3. Any use of data which does not comply with Paragraphs 1 and 2 shall be considered a misuse under the national law of each Member State.*

**4. Communication of VIS data to third countries (Art. 25 B)**

Moreover, in its negotiations with the Council, the European Parliament has emphasised that it finds neither third country access to the VIS nor systematic transfer of VIS data to third countries acceptable.

The Member States in the Visa Working Party meeting on 8/9 January 2007 similarly rejected the wording suggested by the European Parliament for a new Art 25 B as too comprehensive and too vague.

The Presidency agrees with the European Parliament's intention to the extent that a systematic transfer of VIS data to third countries without any specific reason for the transfer is illegal and, against this background, suggests the following wording for Art. 25 B:

## **Article 25 B**

### ***Communication of data to third countries or international organisations***

*Data processed in the VIS pursuant to this Regulation shall not be transferred or made available to a third country or to an international organisation, unless this is necessary in specific cases in order to prove the identity of third-country nationals in accordance with the relevant provisions of Community law and the national law of the Member State which transferred the data, including the legal provisions relevant for data protection and subject to the approval of the Member State(s) which entered the data into the VIS.*

#### **5. Other unresolved issues**

##### **a. Art. 23(8)**

The French delegation proposed an amendment to Art. 23(8) to ensure the operational quality of the VIS.

Art. 23(8) currently reads as follows:

*“Operational management of the VIS shall consist of all the tasks necessary to keep the VIS functioning on a 24 hours a day, 7 days a week basis in accordance with this Regulation, in particular the maintenance work and technical developments necessary **for the smooth running of the system**” .*

France suggested the following wording for Art. 23(8) (cf. doc. 7107/07 VISA 80 CODEC 191 COMIX 257):

*“Operational management of the VIS shall consist of all the tasks necessary to keep the VIS functioning on a 24 hours a day, 7 days a week basis in accordance with this regulation, in particular the maintenance work and technical developments necessary to ensure that the system continues to display the existing operational quality, in particular as regards the time required for interrogation of the central database by consular posts, which should not in any case exceed ten minutes.”*

Member States and the Commission are asked to comment on the French proposal.

**b. Art. 38(5)**

Cyprus, supported by Greece, proposed the following version of Art. 38(5) at the last SCIFA meeting on 26 February 2007:

*“No Member State shall consult the data transmitted by other Member States to the VIS before it or another Member State representing this Member State starts entering data in accordance with paragraphs 2 and 3, with the exception of the Member states progressing towards full implementation of the Schengen acquis and they have already developed their national VIS system.”*

Member States and the Commission are asked to declare whether they can accept the new version of the Cypriot proposal.

---