**Council of the**
**European Union**

**Brussels, 6 December 2018
(OR. en)**

**15126/1/18
REV 1**

**LIMITE**

**VISA 319
FRONT 432
MIGR 214
DAPIX 368
SIRIS 173
COMIX 681
CODEC 2204**

<table>
<tr><td>Interinstitutional File:<br>2018/0152(COD)</td><td></td></tr>
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**NOTE**

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| From: | Presidency |
| To: | Visa Working Party/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein) |
| No. prev. doc.: | 8853/18, 11778/18, 12980/18, 12986/18, 13725/18, 13799/1/18, 14350/18, 15125/18 |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA |
| | - Final Presidency compromise proposals after the fifth examination (non-consolidated version) |

Delegations will find in the Annex for information the "non-consolidated" version of the final Presidency compromise proposals which is set out in doc. 15125/18. Coreper on 19 December 2018 should adopt the Council negotiating mandate in this format.

Changes to the original Commission proposal (doc. 8853/18) are marked in ***bold italics*** for additions and ~~strikethrough~~ for deletions.

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2018/0152 (COD)

Proposal for a

## REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union, and in particular, ~~Article 16(2),~~ Article 77(2)(a) (b), (d) and (e)~~, Article 78(2)(d),(e) and (g), Article 79(2)(c), and (d),~~ *Article 79(2)(a) and* Article 87(2)(a) ~~and Article 88(2)(a)~~,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

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[1]     OJ C , , p. .
[2]     OJ C , , p. .

(1)     The Visa Information System (VIS) was established by Council Decision 2004/512/EC[3] to serve as the technology solution to exchange visa data between Member States. Regulation (EC) No 767/2008 of the European Parliament and of the Council[4] laid down the VIS purpose, functionalities and responsibilities, as well as the conditions and procedures for the exchange of short-stay visa data between Member States to facilitate the examination of short-stay visa applications and related decisions. Regulation (EC) No 810/2009 of the European Parliament and of the Council[5] set out the rules on the registration of biometric identifiers in the VIS. Council Decision 2008/633/JHA[6] laid down the conditions under which Member States' designated authorities and Europol may obtain access to consult the VIS for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences.

(2)     The overall objectives of the VIS are to improve the implementation of the common visa policy, consular cooperation and consultation between central visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order to: facilitate the visa application procedure; prevent 'visa shopping'; facilitate the fight against identity fraud; facilitate checks at external border crossing points and within the Member States' territory; assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States; facilitate the application of the Regulation (EU) No 604/2013 of the European Parliament and of the Council[7] and contribute to the prevention of threats to the internal security of any of the Member States.

(3)     The Communication of the Commission of 6 April 2016 entitled 'Stronger and Smarter Information Systems for Borders and Security'[8] outlined the need for the EU to strengthen and improve its IT systems, data architecture and information exchange in the area of border management, law enforcement and counter-terrorism and emphasised the need to improve the interoperability of IT systems. The Communication also identified a need to address information gaps, including on third country nationals holding a long-stay visa.

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[3]     Council Decision 2004/512/EC of 8 June 2004 establishing the Visa information System (VIS) (OJ L 213, 15.6.2004, p. 5).

[4]     Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

[5]     Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

[6]     Council Decision 2008/633/JHA of 23 June 2008 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 (OJ L 218, 13.8.2008, p. 129).

[7]     Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

[8]     COM(2016) 205 final.

(4)     The Council endorsed a Roadmap to enhance information exchange and information management[9] on 10 June 2016. In order to address the existing information gap in the documents issued to third-country nationals, the Council invited the Commission to assess the establishment of a central repository of residence permits and long-stay visas issued by Member States, to store information on these documents, including on expiry dates and on their possible withdrawal. ~~Article 21 of the Convention implementing the Schengen Agreement provides a right to free movement within the territory of the states party to the Agreement for a period of not more than 90 days in any 180 days, by instituting the mutual recognition of the residence permits and long stay visas issued by these States.~~

(5)     In Council Conclusions of 9 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems[10], the Council acknowledged that new measures might be needed in order to fill the current information gaps for border management and law enforcement, in relation to border crossings by holders of long-stay visas and residence permits. The Council invited the Commission to undertake a feasibility study as a matter of priority for the establishment of a central EU repository containing information on long-stay visas and residence permits. On this basis, the Commission conducted two studies: the first feasibility study[11] concluded that developing a repository would be technically feasible and that re-using the VIS structure would be the best technical option, whereas the second study[12] conducted an analysis of necessity and proportionality and concluded that it would be necessary and proportionate to extend the score of VIS to include the documents mentioned above.

(6)     The Communication of the Commission of 27 September 2017 on the 'Delivery of the European Agenda on Migration'[13] stated that the EU's common visa policy is not only an essential element to facilitate tourism and business, but also a key tool to prevent security risks and risks of irregular migration to the EU. The Communication acknowledged the need to further adapt the common visa policy to current challenges, taking into account new IT solutions and balancing the benefits of facilitated visa travel with improved migration, security and border management. The Communication stated that the VIS legal framework would be revised, with the aim of further improving the visa processing, including on data protection related aspects and access for law enforcement authorities, further expanding the use of the VIS for new categories and uses of data and to make full use of the interoperability instruments.

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[9]     Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area (9368/1/16 REV 1).
[10]    Council Conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems (10151/17).
[11]    "Integrated Border Management (IBM) – Feasibility Study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits" (2017).
[12]    "Legal analysis on the necessity and proportionality of extending the scope of the Visa Information System (VIS) to include data on long stay visas and residence documents" (2018).
[13]    COM(2017) 558 final, p.15.

(7)     The Communication of the Commission of 14 March 2018 on adapting the common visa policy to new challenges[14] reaffirmed that the VIS legal framework would be revised, as part of a broader process of reflection on the interoperability of information systems.

*(7a)    Article 21 of the Convention implementing the Schengen Agreement provides a right to free movement within the territory of the states party to the Agreement for a period of not more than 90 days in any 180 days, by instituting the mutual recognition of the residence permits and long stay visas issued by these States. There are no means to check whether the holder of those documents are not a threat to the security of the Member States other than the one that issued the long-stay visa or residence document. In order to address the existing information gap in the documents issued to third-country nationals, information on long-stay visas and residence permits should be stored in the VIS. As regards those documents, the VIS should have the purpose of support a high level of security, which is particularly important in an area without internal border controls such as the Schengen area, by contributing to the assessment of whether the applicant is considered to pose a threat to public policy, internal security or public health. It should also aim at improving the effectiveness and efficiency of checks at the external borders and of checks within the territory of the Member States carried out in accordance with EU law or national law. The VIS should also assist in the identification, in particular in order to facilitate the return of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States. It should finally contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences; ensure the correct identification of persons; facilitate the application of Regulation (EU) No 604/2013 and of Directive 2013/32/EU and support the objectives of the Schengen Information System (SIS).*

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**14**     COM(2018) 251 final.

(8)     When adopting Regulation (EC) No 810/2009, it was recognised that the issue of the sufficient reliability for identification and verification purposes of fingerprints of children under the age of 12 and, in particular, how fingerprints evolve with age, would have to be addressed at a later stage, on the basis of the results of a study carried out under the responsibility of the Commission. A study[15] carried out in 2013 by the Joint Research Centre concluded that fingerprint recognition of children aged between 6 and 12 years is achievable with a satisfactory level of accuracy under certain conditions. A second study[16] confirmed this finding in December 2017 and provided further insight into the effect of aging over fingerprint quality. On this basis, the Commission conducted in 2017 a further study looking into the necessity and proportionality of lowering the fingerprinting age for children in the visa procedure to 6 years. This study[17] found that lowering the fingerprinting age would contribute to better achieving the VIS objectives, in particular in relation to the facilitation of the fight against identity fraud, facilitation of checks at external border crossing points, and could bring additional benefits by strengthening the prevention and fight against children's rights abuses, in particular by enabling the identification/verification of identity of third-country national (TCN) children who are found in Schengen territory in a situation where their rights may be or have been violated (e.g. child victims of trafficking in human beings, missing children and unaccompanied minors applying for asylum).

(9)     The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation. The child's well-being, safety and security and the views of the child shall be taken into consideration and given due weight in accordance with his or her age and maturity. The VIS is in particular relevant where there is a risk of a child being a victim of trafficking.

(9a)    The visa procedure and the VIS should benefit from the technology developments related to facial image recognition and taking live facial images *upon submission of* ~~as part of the short-stay~~ visa *applications.* ~~procedure,~~ *In case* ~~and if~~ the national legislation of the Member States allow also when processing long-stay visa and residence permit applications, *the live facial image* should be the primary mean of registering the fac*e*~~ial image~~ of the applicants in the VIS. Exceptions from this requirement should however be provided for applicants who are also exempted from the requirement of having their fingerprints captured *for reasons other than the impossibility to take fingerprints. Taking live facial images upon submission of applications will also contribute addressing biometric vulnerabilities such as 'face-morphing' used for identity fraud.*

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[15]    Fingerprint Recognition for Children (2013 - EUR 26193).
[16]    "Automatic fingerprint recognition: from children to elderly" (2018 – JRC).
[17]    "Feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicant's travel document in the Visa Information System (VIS)" (2018).

(10) The personal data provided by the applicant for a ~~short stay~~ visa should be processed by the VIS to assess whether the entry of the applicant in the Union could pose a threat to the public security or to public health in the Union and also assess the risk of irregular migration of the applicant. As regards third country nationals ~~who obtained~~ *applying for* a long stay visa or a residence permit, these checks should be limited to contributing *to assess whether the third country national could pose a threat to public policy, internal security or public health and* to assess *in accordance with the relevant Union and national legislation* the identity of the document holder *and*~~,~~ the authenticity and the validity of the long-stay visa or residence permit*. As Eurodac, in addition to data on applicants for international protection, also contains data of third-country nationals or stateless persons apprehended in connection with irregular crossing of an external border there is an overriding public security concern which makes the searching of this database proportionate.* ~~as well as whether the entry of the third country national in the Union could pose a threat to public security or to public health in the Union. They should not interfere with any decision on long-stay visas or residence permits.~~

(11) The assessement of such risks cannot be carried out without processing the personal data related to the person's identity, travel document, and, ~~as the case may be~~ if applicable, sponsor or, if the applicant is minor, identity of the responsible person. Each item of personal data in the applications should be compared with the data present in a record, file or alert registered in an information system (the Schengen Information System (SIS), the Visa Information System (VIS), the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD), the Entry/Exit System (EES), the Eurodac, *[*the ECRIS-TCN**[18]** system ~~as far as convictions related to terrorist offences or other forms of serious criminal offences are concerned~~*]* and/or the Interpol Travel Documents Associated with Notices database (Interpol TDAWN)) or against the watchlist~~s~~ *referred to in Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System (the ETIAS watchlist)*, or against specific risk indicators. The categories of personal data that should be used for comparison should be limited to the categories of data present in the queried information systems, the watchlist or the specific risk indicators.

(12) Interoperability between EU information systems was established by [*Regulation (EU) XX on interoperability*] so that these EU information systems and their data supplement each other with a view to improving the management of the external borders, contributing to preventing and combating illegal migration and ensuring a high level of security within the area of freedom, security and justice of the Union, including the maintenance of public security and public policy and safeguarding the security in the territories of the Member States.

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[18] *References to ECRIS-TCN remain in square brackets in the entire text with the understanding that the discussion on the question of querying the future ECRIS-TCN or not has to be held at a later stage.*

(13)    The interoperability between the EU information systems allows systems to supplement each other to facilitate the correct identification of persons, contribute to fighting identity fraud, improve and harmonise data quality requirements of the respective EU information systems, facilitate the technical and operational implementation by Member States of existing and future EU information systems, strengthen and simplify the data security and data protection safeguards that govern the respective EU information systems, streamline the law enforcement access to the EES, the VIS, the ~~[ETIAS]~~ and Eurodac, and support the purposes of the EES, the VIS, the ~~[ETIAS]~~, Eurodac, the SIS and the [ECRIS-TCN system].

(14)    The interoperability components cover the EES, the VIS, the ~~[ETIAS]~~, Eurodac, the SIS, and the [ECRIS-TCN system], and Europol data to enable it to be queried simultaneously with these EU information systems and therefore it is appropriate to use these components for the purpose of carrying out the automated checks and when accessing the VIS for law enforcement purposes. The European search portal (ESP) should be used for this purpose to enable a fast, seamless, efficient, systematic and controlled access to the EU information systems, the Europol data and the Interpol databases needed to perform their tasks, in accordance with their access rights, and to support the objectives of the VIS.

(15)    The comparison against other databases should be automated. Whenever such comparison reveals that a correspondence (a 'hit') exists with any of the personal data or combination thereof in the applications and a record, file or alert in the above information systems, or with personal data in the *ETIAS* watchlist, the application should be processed manually by an operator in the responsible authority. The assessment performed by the responsible authority should lead to the decision to issue or not the ~~short-stay~~ visa.

*(15a)    As the VIS will be part of the common framework of interoperability, the development of new features and processes must be fully coherent with those in the other IT systems that are part of this framework. The automated queries that will be launched by the VIS with the purpose of finding whether information on visa or residence permit applicants is known to other systems will result in hits against other IT systems. A similar system of queries is currently present in only one other system - ETIAS, while the concept of hits is also encountered in the EES, including in relation to the EES-VIS interoperability and in the SIS. The SIS distinguishes between matches (correspondence of searched and found data) and hits (as confirmed matches) in the process of comparison of data between SIS alerts, while the interoperability regulations only refer to a match as a result of an automated comparison between personal data recorded or being recorded in an information system or database. In this context, the concept of 'hit' used in VIS should be understood as having found corresponding data applicable to the queries launched with VIS data. The existence of the hit should trigger, as and where appropriate, a manual additional verification of the data stored in the VIS or other system, to ensure that the authorities processing a visa or a residence permit application receive all the appropriate information that are necessary to decide on that application. The notion of 'hit' used in this Regulation is without prejudice to the notion of 'hit' and the related processes in the SIS Regulations.*

(16)    Refusal of an application for a ~~short-stay~~ visa should not be based only on the automated processing of personal data in the applications.

(17)     Applicants who have been refused a ~~short stay~~ visa on the basis of an information resulted from VIS processing should have the right to appeal. Appeals should be conducted in the Member State that has taken the decision on the application and in accordance with the national law of that Member State. Existing safeguards and rules on appeal in Regulation (EC) No 767/2008 should apply.

(18)     *The use of s*~~S~~pecific risk indicators corresponding to previously identified security, irregular migration or public health risk should ~~be used~~ *contribute* to analyse the application file for a ~~short stay~~ visa. The criteria used for defining the specific risk indicators should in no circumstances be based solely on a person's sex or age. They shall in no circumstances be based on information revealing a person's race, colour, ethnic or social origin, genetic features, language, political or any other opinions, religion or philosofical belief, trade union membership, membership of a national minority, property, birth, disability or sexual orientation. *To the extent possible and where relevant, establishing synergy between the specific risk indicators and the ETIAS screening rules is desirable.*

(19)     The continuous emergence of new forms of security threats, new patterns of irregular migration and public health threats requires effective responses and needs to be countered with modern means. Since these means entail the processing of important amounts of personal data, appropriate safeguards should be introduced to keep the interference with the rights to respect for private and family life and to the personal data limited to what is necessary in a democratic society.

(20)     It should be ensured that at least a similar level of checks is applied to applicants for a ~~short stay~~ visa, or third country nationals who *apply for* ~~obtained~~ a long stay visa or a residence permit, as for visa free third country nationals. ~~To this end a watchlist is also established with information related to persons who are suspected of having committed an act of serious crime or terrorism, or regarding whom there are factual indications or reasonable grounds to believe that they will commit an act of serious crime or terrorism should be used for verifications in respect of these categories of third country nationals as well.~~

(21)     In order to fulfil their obligation under the Convention implementing the Schengen Agreement, international carriers should be able to verify whether or not third country nationals *subject to* ~~holding a short stay~~ visa, ~~a~~ long stay visa or ~~a~~ residence permit *requirement* are in possession of the*se* ~~required~~ valid ~~travel~~ documents. This verification should be made possible through the daily extraction of VIS data into a separate read-only database allowing the extraction of a minimum necessary subset of data to enable a query leading to an ok/not ok answer.

(22)     This Regulation should define the authorities of the Member States which may be authorised to have access to the VIS to enter, amend, delete or consult data on long stay visas and residence permits for the specific purposes set out in the VIS for this category of documents and their holders, and to the extent necessary for the performance of their tasks.

(23)     Any processing of VIS data on long stay visas and residence permits should be proportionate to the objectives pursued and necessary for the performance of tasks of the competent authorities. When using the VIS, the competent authorities should ensure that the human dignity and integrity of the person, whose data are requested, are respected and should not discriminate against persons on grounds of sex, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

(24)     It is imperative that law enforcement authorities have the most up-to-date information if they are to perform their tasks in the fight against terrorist offences and other serious criminal offences. Access of law enforcement authorities of the Member States and of Europol to VIS has been established by Council Decision 2008/633/JHA. The content of this Decision should be integrated into the VIS Regulation, to bring it in line with the current treaty framework.

(25)     Access to VIS data for law enforcement purpose has already proven its usefulness in identifying people who died violently or for helping investigators to make substantial progress in cases related to trafficking in human beings, terrorism or drug trafficking. Therefore, the data in the VIS related to long stays should also be available to the designated authorities of the Member States and the European Police Office ('Europol'), subject to the conditions set out in this Regulation.

(26)     Given that Europol plays a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. Europol's current access to the VIS within the framework of its tasks should be codified and streamlined, taking also into account recent developments of the legal framework such as Regulation (EU) 2016/794 of the European Parliament and of the Council[19].

(27)     Access to the VIS for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes an interference with the fundamental rights to respect for private and family life and to the protection of personal data of persons whose personal data are processed in the VIS. Any such interference must be in accordance with the law, which must be formulated with sufficient precision to allow individuals to adjust their conduct and it must protect individuals against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. Any interference must be necessary in a democratic society to protect a legitimate and proportionate interest and proportionate to the legitimate objective to achieve.

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[19]     Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

(28)	[Regulation 2018/XX on interoperability] provides the possibility for a Member State police authority which has been so empowered by national legislative measures, to identify a person with the biometric data of that person taken during an identity check. However specific circumstances may exist where identification of a person is necessary in the interest of that person. Such cases include situations where the person was found after having gone missing, been abducted or having been identified as victim of trafficking *or where persons who are not able to identify themselves or unidentified human remains, in the event of a natural disaster or an accident*. In such cases, quick access for law enforcement authorities to VIS data to enable a fast and reliable identification of the person, without the need to fulfill all the preconditions and additional safeguards for law enforcement access, should be provided.

(29)	Comparisons of data on the basis of a latent fingerprint, which is the dactyloscopic trace which may be found at a crime scene, is fundamental in the field of police cooperation. The possibility to compare a latent fingerprint with the fingerprint data which is stored in the VIS in cases where there are reasonable grounds for believing that the perpetrator or victim may be registered in the VIS should provide the law enforcement authorities of the Member States with a very valuable tool in preventing, detecting or investigating terrorist offences or other serious criminal offences, when for example the only evidence at a crime scene are latent fingerprints.

(30)	It is necessary to designate the competent authorities of the Member States as well as the central access point through which the requests for access to VIS data are made and to keep a list of the operating units within the designated authorities that are authorised to request such access for the specific purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

(31)	Requests for access to data stored in the Central System should be made by the operating units within the designated authorities to the central access point and should be justified. The operating units within the designated authorities that are authorised to request access to VIS data should not act as a verifying authority. The central access points should act independently of the designated authorities and should be responsible for ensuring, in an independent manner, strict compliance with the conditions for access as established in this Regulation. In exceptional cases of urgency, where early access is necessary to respond to a specific and actual threat related to terrorist offences or other serious criminal offences, the central access point should be able to process the request immediately and only carry out the verification afterwards.

(32)	To protect personal data and to exclude systematic searches by law enforcement, the processing of VIS data should only take place in specific cases and when it is necessary for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences. The designated authorities and Europol should only request access to the VIS when they have reasonable grounds to believe that such access will provide information that will substantially assist them in preventing, detecting or investigating a terrorist offence or other serious criminal offence.

(33) The personal data of holders of long stay documents stored in the VIS should be kept for no longer than is necessary for the purposes of the VIS. It is appropriate to keep the data related to third country nationals for a period of five years in order to enable data to be taken into account for the assessment of ~~short-stay~~ visa applications, to enable detection of overstay after the end of the validity period and in order to conduct security assessments of third country nationals who obtained them. The data on previous uses of a document could facilitate the issuance of future ~~short stay~~ visas. A shorter storage period would not be sufficient for ensuring the stated purposes. The data should be erased after a period of five years, unless there are grounds to erase them earlier.

(34) Regulation (EU) 2016/679 of the European Parliament and of the Council[20] applies to the processing of personal data by the Member States in application of this Regulation. Processing of personal data by law enforcement authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties is governed by Directive (EU) 2016/680 of the European Parliament and of the Council[21].

(35) Members of the European Border and Coast Guard (EBCG) teams, as well as teams of staff involved in return-related tasks are entitled by Regulation (EU) 2016/1624 of the European Parliament and the Council to consult European databases where necessary for fulfilling operational tasks specified in the operational plan on border checks, border surveillance and return, under the authority of the host Member State. For the purpose of facilitating that consultation and enabling the teams an effective access to the data entered in VIS, the ECBGA should be given access to VIS. Such access should follow the conditions and limitations of access applicable to the Member States' authorities competent under each specific purpose for which VIS data can be consulted.

(36) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with Directive 2008/115/EC of the European Parliament and of the Council[22], is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.

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[20] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

[21] Directive (EU) 2016/680 of the European _P_~~p~~arliament and the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

[22] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

*(36a)* *Personal data stored in VIS should not be made available to any third country or international organisation. As an exception to that rule, however, it should be possible to transfer such personal data to a third country or international organisation where the transfer is subject to conditions laid down in relevant Union or national legislation.*

(37)     The third countries of return are often not subject to adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679 or under national provisions adopted to transpose Article 36 of Directive (EU) 2016/680. Furthermore, the extensive efforts of the Union in cooperating with the main countries of origin of illegally staying third-country nationals subject to an obligation to return ha*ves* not been able to ensure the systematic fulfilment by such third countries of the obligation established by international law to readmit their own nationals. Readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679 or to the national provisions adopted to transpose Article 37 of Directive (EU) 2016/680, cover a limited number of such third countries and conclusion of any new agreement remains uncertain. In such situations, personal data could be processed pursuant to this *R*regulation with third-country authorities for the purposes of implementing the return policy of the Union provided that the conditions laid down in Article 49(1)(d) of Regulation (EU) 2016/679 or in the national provisions transposing Article 38 or 39 of Directive (EU) 2016/680 are met.

(38)     Member States should make available relevant personal data processed in the VIS, in accordance with the applicable data protection rules and where required in individual cases for carrying out tasks under Regulation (EU) …/… of the European Parliament and the Council[23],Union Resettlement Framework Regulation], to the [European Union Asylum Agency] and relevant international bodies such as the United Nations High Commissioner for Refugees, the International Organisation on Migration and to the International Committee of the Red Cross refugee and resettlement operations, in relation to third-country nationals or stateless persons referred by them to Member States in the implementation of Regulation (EU) …/… [*the Union Resettlement Framework Regulation*].

(39)     Regulation (E*U*C) No …45/20*01*8 of the European Parliament and the Council[24] applies to the activities of the Union institutions or bodies when carrying out their tasks as responsible for the operational management of VIS.

(40)     The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on …

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**23**     Regulation (EU) …/… of the European Parliament and the Council [full title] (OJ L …, …, p. …).

**24**     *Add reference to the replacement of Regulation (EC) No 45/2001* ~~of the European Parliament and 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 (OJ L 8, 12.1.2001, p. 1).~~

(41) In order to enhance third countries' cooperation on readmission of irregular migrants and to facilitate the return of illegally staying third country nationals whose data might be stored in the VIS, the copies of the travel document of applicants for a ~~short stay~~ visa should be stored in the VIS. Contrary to information extracted from the VIS, copies of travel documents are a proof of nationality more widely recognised by third countries.

(42) Consultation of the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa, as established by Decision No 1105/2011/EU of the European Parliament and of the Council[25], is a compulsory element of the visa examination procedure. Visa authorities should systematically implement this obligation and therefore this list should be incorporated in the VIS to enable automatic verification of the recognition of the applicant's travel document.

(43) Without prejudice to Member States' responsibility for the accuracy of data entered into VIS, *the Management Authority* ~~eu-LISA~~ should be responsible for reinforcing data quality by introducing a central data quality monitoring tool, and for providing reports at regular intervals to the Member States.

(44) In order to allow better monitoring of the use of VIS to analyse trends concerning migratory pressure and border management, *the Management Authority* ~~eu-LISA~~ should be able to develop a capability for statistical reporting to the Member States, the Commission, and the European Border and Cost Guard Agency without jeopardising data integrity. Therefore, a central statistical repository should be established. None of the produced statistics should contain personal data.

(45) This Regulation is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council.[26]

(46) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the need to ensure the implementation of a common policy on visas, a high level of security within the area without controls at the internal borders and the gradual establishment of an integrated management system for the external borders, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

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[25] Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).

[26] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158 30.4.2004, p. 77).

(47) This Regulation establishes strict access rules to the VIS and the necessary safeguards. It also foresees individuals' rights of access, rectification, erasure and remedies in particular the right to a judicial remedy and the supervision of processing operations by public independent authorities. Additional safeguards are introduced by this Regulation to cover for the specific needs of the new categories of data that will be processed by the VIS. This Regulation therefore respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to human dignity , the right to liberty and security, the respect for private and family life, the protection of personal data, the right to asylum and protection of the principle of non-refoulement and protection in the event of removal, expulsion or extradition, the right to non-discrimination, the rights of the child and the right to an effective remedy.

(48) Specific provisions should apply to third country nationals who are subject to a visa requirement, who are family members of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement under Union law and who do not hold a residence card referred to under Directive 2004/38/EC. Article 21(1) of the Treaty on the Functioning of the European Union stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. The respective limitations and conditions are to be found in Directive 2004/38/EC.

(49) As confirmed by the Court of Justice of the European Union, such family members have not only the right to enter the territory of the Member State but also to obtain an entry visa for that purpose. Member States must grant such persons every facility to obtain the necessary visas which must be issued free of charge as soon as possible and on the basis of an accelerated procedure.

(50) The right to obtain a visa is not unconditional as it can be denied to those family members who represent a risk to public policy, public security or public health pursuant to Directive 2004/38/EC. Against this background, the personal data of family members can only be verified where the data relate to their identification and their status only insofar these are relevant for assessment of the security *or health* threat they could represent. Indeed, the examination of their visa applications should be made exclusively against the security concerns, and not those related to migration risks.

(51) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(52)     This Regulation constitutes a development of the provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[27]; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(53)     This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[28]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(54)     As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen acquis[29] which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC[30].

(55)     As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[31] which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[32] and with Article 3 of Council Decision 2008/149/JHA[33].

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[27]    Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ L 131, 1.6.2000, p. 43).

[28]    Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

[29]    OJ L 176, 10.7.1999, p. 36.

[30]    Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

[31]    OJ L 53, 27.2.2008, p. 52.

[32]    Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1.

[33]    Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 50).

(56)    As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[34] which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[35] and with Article 3 of Council Decision 2011/349/EU.[36]

(57)    This Regulation, with the exception of Article 22r, constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession, with the exception of provisions rendered applicable to Bulgaria and Romania by Council Decision (EU) 2017/1908[37],

HAVE ADOPTED THIS REGULATION:

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[34]    OJ L 160, 18.6.2011, p. 21.

[35]    Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

[36]    Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

[37]    Council Decision (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provision of the Schengen acquis relating to the Visa Information System in the Republic of Bulgaria and Romania (OJ L 269, 19.10.2017, p. 39).

*Article 1*

Regulation (EC) No 767/2008 is amended as follows:

(1)     In Article 1 the following paragraphs are added:

"This Regulation also lays down procedures for the exchange of information between Member States on long-stay visas and residence permits, including on certain decisions on long-stay visas and residence permits.

By storing identity, travel document and biometric data in the common identity repository (CIR) established by Article 17 of Regulation 2018/XX of the European Parliament and of the Council* [Regulation 2018/XX on interoperability], the VIS contributes to facilitating and assisting in the correct identification of persons registered in the VIS."

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*     Regulation 2018/XX of the European Parliament and of the Council* [Regulation 2018/XX on interoperability] (OJ L).";

(2)     Article 2 is replaced by the following:

*"Article 2*
*Purpose of VIS*

1. The VIS shall have the purpose of improving the implementation of the common visa policy, consular cooperation and consultation between ~~central~~ visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order *to*:

(a) ~~to~~ facilitate the visa application procedure;

(b) ~~to~~ prevent the bypassing of the criteria for the determination of the Member State responsible for examining the application *for a visa*;

(c) ~~to~~ facilitate the fight against fraud;

(d) *improve the effectiveness and efficiency of* ~~to facilitate~~ checks at external border crossing points and within the territory of the Member States;

(e) ~~to~~ assist in the identification*, in particular in order to facilitate the* ~~and~~ return of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States;

(f) to assist in the identification of persons *in specific circumstances* ~~who have gone missing~~;

(g) ~~to~~ facilitate the application of Regulation (EU) No 604/2013 of the European Parliament and of the Council* and of Directive 2013/32/EU of the European Parliament and of the Council**;

(h) ~~to~~ contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;

(i) ~~to~~ contribute to the prevention of threats to the internal security of any of the Member States;

(j) ~~to~~ ensure the correct identification of persons;

(k) support the objectives of the Schengen Information System (SIS) *especially* related to the alerts in respect of third country nationals subject to a refusal of entry, persons wanted for arrest or for surrender or extradition purposes, on missing *or vulnerable* persons, ~~on~~ persons sought to assist with a judicial procedure and ~~on~~ persons for discreet checks*, inquiry checks* or specific checks."

2. As regards long stay visas and residence permits, the VIS shall have the purpose of facilitating the exchange of data between Member States on the decisions related thereto, in order to:

(a) support a high level of security by contributing to the assessment of whether the applicant is considered to pose a threat to public policy, internal security or public health ~~prior to their arrival at the external borders crossing points~~;

(b) ~~enhance~~ *improve* the effectiveness *and efficiency* of border checks and of checks within the territory;

*(ba) to assist in the identification, in particular in order to facilitate the return of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States;*

(c) contribute to the prevention, detection and investigation of terrorist offences or of other serious criminal offences;

(d)     ensure the correct identification of persons;

(e)     facilitate the application of Regulation (EU) No 604/2013 and of Directive 2013/32/EU;

(f)     support the objectives of the Schengen Information System (SIS) *especially* related to the alerts in respect of third country nationals subject to a refusal of entry, persons wanted for arrest or for surrender or extradition purposes, on missing *or vulnerable* persons, ~~on~~ persons sought to assist with a judicial procedure and ~~on~~ persons for discreet checks*, inquiry checks* or specific checks."

\*      Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

\*\*      Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).";

(3)      Article 3 is deleted;

(4)      in Article 4, the following points are added:

(12)   'VIS data' means all data stored in the VIS Central System and in the CIR in accordance with Articles 9 to14, 22*a and 22c*, to 22f;

(13)   ~~'identity data' means the data referred to in Article 9(4)(a) and (aa);~~

(14)   'fingerprint data' means the *VIS* data relating fingerprints ~~that is stored in a VIS file~~;

(**15**)   'facial image' means digital image of the face *taken live, or a scan of the photograph as referred to in Article 10(3)c of Regulation (EC) No 810/2009 when live facial image is not required or exceptionally the facial image extracted from the chip of the machine readable travel document in accordance with Article 13 of Regulation (EC) No 810/2009*;

*(15a) 'hit' means the existence of a correspondence as a result of an automated comparison between personal data recorded or being recorded in an information system or a database;*

(16)   'Europol data' means personal data processed by Europol for the purpose referred to in Article 18(2)(a) of Regulation (EU) 2016/794 of the European Parliament and of the Council\*;

(17)   'residence permit' means all residence permits issued by the Member States in accordance with the uniform format laid down by Council Regulation (EC) No 1030/2002\*\* and all other documents referred to in Article 2(16)(b) of Regulation (EU) 2016/399;

(18)   'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Convention;

(19)   'national supervisory authority' ~~as regards law enforcement purposes~~ means the supervisory authorit~~yies~~ established in accordance with *Article 51(1) of Regulation (EU) 2016/679\*\*\* and the supervisory authority established in accordance with* Article 41 of Directive (EU) 2016/680 of the European Parliament and of the Council\*\*~~\*~~;

(20) 'law enforcement' means the prevention, detection or investigation of terrorist offences or other serious criminal offences;

(21) 'terrorist offence*s*' mean*s* the offence*s* under national law which correspond*s* or *is* ~~are~~ equivalent to *one of the offences* ~~those~~ referred to in Directive (EU) 2017/541 of the European Parliament and of the Council\*\*\*\*;

(22) 'serious criminal offence*s*' means the offence*s* which correspond*s* or *is*~~are~~ equivalent to *one of the offences* ~~those~~ referred to in Article 2(2) of Council Framework Decision 2002/584/JHA\*\*\*\*\*, if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years.

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\*     Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

\*\*     Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157 15.6.2002, p. 1)

\*\*\*     *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)*

\*\*\*\* Directive (EU) 2016/680  of the European parliament and the Council on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

\*\*\*\*\*     Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

\*\*\*\*\*     Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.1)";

(5)     Article 5 is replaced by the following:

*"Article 5*
*Categories of data*

1. Only the following categories of data shall be recorded in the VIS:

(a) alphanumeric data on the ~~short stay~~ visa applicant and on visas requested, issued, refused, annulled, revoked or extended referred to in Article 9(1) to (4) and Articles 10 to 14, alphanumeric data on long stay visa and residence permits issued, withdrawn, refused, annulled, revoked*, renewed* or extended referred to in Articles 22c, 22d, 22e and 22f, as well as information regarding the hits referred to in Articles 9a and 22b~~, and the results of verifications referred to in Article 9c(6)~~;

(b) facial images referred to in Article 9(5) and Article  22*a*~~c~~(*12*)(*j*~~f~~);

(c) fingerprint data referred to in Article 9(6) and Article 22*a*~~c~~(*12*)(*k*~~g~~);

*(ca) scans of the biographic data page of the travel document referred to in Article 9(7) and Article 22a(1)(h);*

(d) links to other applications referred to in Article 8(3) and (4) and Article 22a(3)."

2. The messages transmitted by the VIS, referred to in Article 16, Article 24(2) and Article 25(2), shall not be recorded in the VIS, without prejudice to the recording of data processing operations pursuant to Article 34.

3. The CIR shall contain the data referred to in Article 9(4)(a) to (cc), Article 9(5) and 9(6), Article 22*a*~~c~~(*12*)(*d*~~a~~)~~,~~ to (*g*~~cc~~), (*j*~~f~~) and (*k*~~g~~)~~, and Article 22d(a) to (cc), (f) and (g)~~. The remaining VIS data shall be stored in the VIS Central System."

(6)     the following Article 5a is inserted:

"*Article 5a*

List of recognised travel documents

(1)     The list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa, as established by Decision No 1105/2011/EU of the European Parliament and of the Council\*, shall be integrated in the VIS.

(2)     The VIS shall provide the functionality for the centralised management of the list of recognised travel documents and of the no²tification of the recognition or non-recognition of the listed travel documents pursuant to Article 4 of Decision No 1105/2011/EU.

(3)     The detailed rules on managing the functionality referred to in paragraph 2 shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).

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    \*     Decision No 1105/2011/EU of the European Parliament and of the Council of 25 October 2011 on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list (OJ L 287, 4.11.2011, p. 9).";

(7)         Article 6 is amended as follows:

    *(-a) paragraph 1 is replaced by the following:*

*"1. Access to the VIS for entering, amending or deleting the data referred to in Article 5(1) in accordance with this Regulation shall be reserved exclusively to the duly authorised staff of the visa authorities and to the authorities competent to decide on an application for a long-stay visa or residence permit in accordance with Article 22a to 22f.";*

    (a) paragraph 2 is replaced by the following:

"2. Access to the VIS for consulting the data shall be reserved exclusively for the duly authorised staff of the national authorities of each Member State and of the EU bodies which are competent for the purposes laid down in ***Article 6a and 6b,*** Articles 15 to 22, Articles 22***ge*** to 22***lf***, ~~Articles 22g to 22j,~~ as well as for the purposes laid down in Articles 20 and 21 of [*Regulation 2018/XX on interoperability*].

That access shall be limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued.";

    (b) the following paragraph 4 is added:

"4. ***In addition to the notifications mentioned in paragraph 3, each Member State shall also communicate to the Management Authority without delay a list of the competent national authorities having access to the VIS for the purposes of this Regulation. That list shall specify for which purpose each authority is to have access to the data stored in the VIS.***

The VIS shall provide the functionality for the centralised management of this list."

    (c) the following paragraph 5 is added:

"5. The detailed rules on managing the functionality for the centralised management of the list in paragraph 3 shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2)."

*(7a)   The following Article 6a and 6b are inserted:*

*"Article 6a*

*Access to data for identification*

*1. Solely for the purposes of the identification of any person who may have been registered previously in the VIS or who may not, or may no longer, fulfil the conditions for the entry to, or stay or residence on, the territory of the Member States, the authorities competent for carrying out checks at borders at which the EES is operated or within the territory of the Member States as to whether the conditions for entry to, or stay or residence on, the territory of the Member States are fulfilled, shall have access to search in the VIS with the fingerprints of that person.*

*Where the fingerprints of that person cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 9(4)(a) and/or (c) and/or Article 9(5); or Article 22a(1)(d) and/or (e), (f), (g) and/or (j); this search may be carried out in combination with the data referred to in Article 9(4)(b) or Article 9(4)(cc). However, the facial image shall not be the only search criterion.*

*2. If the search with the data listed in paragraph 1 indicates that data on the applicant are recorded in the VIS, the competent authority shall be given access to consult the following data of the application file as well as the linked application file(s), pursuant to Article 8(3) and (4) and Article 22a(3), solely for the purposes referred to in paragraph 1:*

*(a) the application number, the status information and the authority to which the application was lodged;*

*(b) the data taken from the application form, referred to in Article 9(4) or the data referred to in Article 22a, 22c or 22d;*

*(c) facial images;*

*(d) the data entered in respect of any visa issued, refused, annulled, revoked or whose validity is extended, or of applications where examination has been discontinued, referred to in Articles 10 to 14 or data entered in respect of any long stay visa or residence permit issued, extended, renewed, refused, withdrawn, revoked or annulled referred to in Articles 22a and 22c to 22f.*

*3. Where the person holds a visa or long-stay visa or residence permit, the competent authorities shall access the VIS first in accordance with Articles 18 or 19 or Articles 22g or 22h."*

*Article 6b*

*Use of VIS data for the purpose of entering certain SIS alerts*

*1. Data stored in the VIS may be used for the purpose of entering an alert on persons referred to in Article 32 of Regulation (EU) … of the European Parliament and of the Council [Regulation (EU) on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters]. In those cases, the transmission of data shall take place via secured means to the SIRENE Bureau of the Member State responsible.*

*2. Where there is a hit against a SIS alert as referred to in paragraph 1, child protection authorities and national judicial authorities, including those responsible for the initiation of public prosecutions in criminal proceedings and for judicial inquiries prior to charge and their coordinating authorities, as referred to in Article 44 of Regulation (EU) … [COM(2016) 883 final – SIS LE], may request, in the performance of their tasks, access to the data entered in VIS. The conditions provided for in Union and national legislation shall apply."*

(8)     In Article 7 a new paragraph 3 is inserted:

"3. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation. The child's well-being, safety and security, in particular where there is a risk of the child being a victim of ~~human~~ trafficking in human beings, and the views of the child shall be taken into consideration and given due weight in accordance with his or her age and maturity."

(9)     The title of Chapter II is replaced by the following:

"ENTRY AND USE OF DATA ON ~~SHORY STAY~~ VISA*S* BY VISA AUTHORITIES"

(10)     Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. When the application is admissible pursuant to Article 19 of Regulation (EC) No 810/2009, the visa authority shall create the application file within *four* ~~2~~ working days, by entering the data referred to in Article 9 in the VIS, as far as those data are required to be provided by the applicant.";

(b) the following paragraph 1a is inserted:

"1a. Upon creation of the application file, the VIS shall automatically launch the query pursuant to Article 9a and return results.

(c) paragraph 5 is replaced by the following:

5. Where particular data are not required to be provided for legal reasons or factually cannot be provided, the specific data field(s) shall be marked as 'not applicable'. The absence of fingerprints should be indicated by "VIS0"; furthermore, the system shall permit a distinction to be made between the cases pursuant to Article 13(7)(a) to (d) of Regulation (EC) No 810/2009."

(11)     Article 9 is amended as follows:

(a) in point 4, points (a), (b) and (c) are replaced by the following:

"(a)     surname (family name); first name*(s)* ~~or names~~ (given names); date of birth; *current* nationality or nationalities; sex;

(aa)     surname at birth (former ~~surname~~ *family name*(s)); place and country of birth; nationality at birth;

(b) the type and number of the travel document ~~or documents and the three letter code of the issuing country of the travel document or documents~~;

(c) the date of expiry of the validity of the travel document ~~or documents~~;

(cc) the ~~authority~~ *country* which issued the travel document and its date of issue;";

(b) point 5 is replaced by the following:

"5. the facial image of the applicant ***with an indication if the facial image was taken live upon***

***submission of the application***, ~~in accordance with Article 13(1) of Regulation (EC) No 810/2009.~~";

(c) the following point*s* 7 ***and 7a*** ~~is~~ ***are*** added:

"7. a scan of the biographic data page ~~.~~ ***of the travel document;***

***7a. if applicable, the fact that the applicant applies as a family member of a Union citizen to whom Directive 2004/38/EC\* applies or of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other."***

~~(d) the following two paragraphs are added:~~

~~"8. The facial image of third country nationals referred to in point 5 of the first paragraph shall have sufficient image resolution and quality to be used in automated biometric matching.~~

~~By way of derogation from the second paragraph, in exceptional cases where the quality and resolution specifications set for the enrolment of the live facial image in the VIS cannot be met, the facial image may be extracted electronically from the chip of the electronic Machine Readable Travel Document (eMRTD). In such cases, the facial image shall only be inserted into the individual file after electronic verification that the facial image recorded in the chip of the eMRTD corresponds to the live facial image of the third-country national concerned.";~~

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*\*DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC*

(12)      the following new Articles 9a to 9d are inserted:

"*Article 9a*

Queries to other systems

1.        The application files shall be automatically processed by the VIS to identify hits. The VIS shall examine each application file individually.

2.        When an application is created ~~or a visa is issued~~, the VIS shall check whether the travel document related to that application is recognised in accordance to Decision No 1105/2011/EU, by performing an automatic search against the list of recognised travel documents referred to in Article *5a*, and shall return a result.

3.        For the purpose of the verifications provided for in Article 21(1) and Article 21(3)(a), (c) and (d) of Regulation (EC) No 810/2009, the VIS shall launch a query ~~by using the European Search Portal defined in Article 6(1) [*of the Interoperability Regulation*]~~ to compare the relevant data referred to in point*s* (4)*, (5) and (6)* of Article 9 of this Regulation to the data present in a record, file or alert registered in the VIS, the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), including the watchlist referred to in Article *34*~~29~~ of Regulation (EU) 2018/*1240*~~XX~~ for the purposes of establishing a European Travel Information and Authorisation System], the Eurodac, [the ECRIS-TCN system ~~as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned~~], the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD) and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN).

         *This query may be launched using, where appropriate, the European Search Portal in accordance with Chapter II [of the Interoperability Regulation].*

4.        The VIS shall add a reference to any hit obtained pursuant to paragraph 3*, with the exception of hits resulting from the comparison referred to in paragraph 5, the Europol data or the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) and hits against a SIS alert related to persons wanted for arrest for surrender or extradition purposes,* to the application file. Additionally, the VIS shall identify, where relevant, the Member State(s) that entered or supplied the data having triggered the hit(s) or Europol *and Interpol*, and shall record this in the application file.

4a.      *By derogation from paragraph 4, where the automatic comparison referred to in Article 9a(3) reports a hit against the Europol data or the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) or a hit against a SIS alert related to persons wanted for arrest for surrender or extradition purposes, the VIS shall record in the application file that further verifications in the Europol data and/or the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) or further consultations with the competent SIRENE Bureau of the Member State that entered the SIS alert related to persons wanted for arrest for surrender or extradition purposes are needed.*

5. For the purposes of Article 2(1)(k), the queries carried out under paragraph 3 of this Article shall compare the relevant data referred to in Article 15(2) to the data present in the SIS in order to determine whether the applicant is subject to one of the following alerts:

(a) ~~an alert in respect of persons wanted for arrest for surrender purposes or extradition purposes;~~

(b) an alert in respect of missing *or vulnerable* persons;

(c) an alert in respect of persons sought to assist with a judicial procedure;

(d) an alert on persons and objects for discreet checks*, inquiry checks* or specific checks.

*Article 9b*

Specific provisions applicable to the queries to other systems for family members of EU citizens or of other third country nationals enjoying the right of free movement under Union law

1. As regards third country nationals who are members of the family of a Union citizen to whom Directive 2004/38/EC applies or of a national of a third country enjoying the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other, the automated checks in Article 9a(3) shall be carried out solely for the purpose of checking that there are no factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a risk to security or ~~high~~ epidemic risk in accordance with Directive 2004/38/EC.

2. The VIS shall not verify whether:

a) the applicant is currently reported as overstayer or whether he or she has been reported as overstayer in the past through consultation of the EES;

b) the applicant corresponds to a person whose data is recorded in the Eurodac.

3. Where the automated processing of the application as referred to in Article 9a(3) has reported a hit corresponding to a refusal of entry and stay alert as referred to in Article 24 of Regulation (EC) 1987/2006, the visa authority shall verify the ground for the decision following which this alert was entered in the SIS. If this ground is related to an illegal immigration risk, the alert shall not be taken into consideration for the assessment of the application. The visa authority shall proceed according to Article 25(2) of the SIS II Regulation.

*Article 9c*

*Manual v~~V~~erification *of the hits* ~~by the central authorities~~*

1. Any hit ~~resulting from the queries~~ pursuant to Article 9a(***43***) shall be manually verified by the ***competent visa*** ~~central~~ authority of the Member State processing the application.

2. Where manually verifying the hits, the ***competent visa*** ~~central~~ authority shall have access to the application file and any linked application files, as well as to all the hits triggered during the automated processing pursuant to Article 9a(3).

3. The ***competent visa*** ~~central~~ authority shall verify whether the identity of the applicant recorded in the application file corresponds to the data present in the VIS, or one of the consulted databases ***and record, if applicable, the reasoned opinion of Europol, if provided in accordance with Article 9ca, in the application file***.

4. Where the personal data do not correspond, and no other hit has been reported during the automated processing pursuant to Article 9a(3), the ***competent visa*** ~~central~~ authority shall erase the false hit from the application file.

*4a.* ***Following the verification by the competent visa authority as referred to in paragraph 3, where the personal data correspond to the data present in the SIS, the VIS shall also send an automated notification to the SIRENE Bureau of the Member State that entered the alert having triggered a hit against SIS.***

*4b.* ***The notification provided to the SIRENE Bureau of the Member State that entered the alert shall contain the relevant data referred to in Article 9 of this Regulation.***

5. ~~Where the data correspond to or where doubts remain concerning the identity of the applicant, the central visa authority processing the application shall inform the central authority of the other Member State(s), which were identified as having entered or supplied the data that triggered the hit pursuant to Article 9a(3). Where one or more Member States were identified as having entered or supplied the data that triggered such hit, the central authority shall consult the central authorities of the other Member State(s) using the procedure set out in Article 16(2).~~

6. ~~The result of the verifications carried out by the central authorities of the other Member States shall be added to the application file.~~

7. By derogation from paragraph 1, where the comparison referred to in Article 9a(5) reports one or more hits ***or where one or more hits against an SIS alert related to persons wanted for arrest for surrender or extradition purposes have been reported***, the VIS shall send an automated notification to the ***SIRENE Bureau*** ~~central authority~~ of the Member State that ***entered the alert. The SIRENE Bureau concerned shall further verify the correspondance of the applicant's personal data with the personal data contained in the alert having triggered the hit and*** ~~launched the query to~~ take any appropriate follow-up action ***in accordance with the relevant legislation***.

*7a.* *By derogation from paragraph 1, where the comparison with the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) reports one or more hits, the VIS shall send an automated notification to the Interpol Central Bureau of the Member State that launched the query, to take any appropriate follow-up action.*

*7b.* *By derogation from paragraph 1, where the comparison with the Europol data reports one or more hits, the VIS shall send an automated notification to Europol and the Europol national unit of the responsible Member State, to take any appropriate follow-up action.*

8. ~~Where Europol is identified as having supplied the data having triggered a hit in accordance with Article 9a(3), the central authority of the responsible Member State shall consult the Europol national unit for follow-up in accordance with Regulation (EU) 2016/794 and in particular its Chapter IV.~~

### *Article 9ca*

### *Consultation of Europol*

1. *Where Europol is identified as having supplied the data having triggered a hit in the Europol data in accordance with Article 9a(3), an automated notification shall be sent to Europol in order to verify the hit by comparing it with its own data. For this purpose, the VIS shall also transmit to Europol the relevant data of the application file which triggered that hit. Where notified and once the hit is confirmed, Europol should provide a reasoned opinion to the Europol national unit and to the competent visa authority of the responsible Member State which shall record it in the application file in accordance with Article 9c(3).*

2. *The competent visa authority of the responsible Member State may consult Europol following the reply on an application to request for additional information. In such a case, the visa authority shall transmit to Europol any relevant information or documentation provided by the applicant in relation to the application for the visa for which Europol is consulted.*

3. *Such consultation shall take place in accordance with Regulation (EU) 2016/794 and in particular its Chapter IV.*

4. *Europol shall reply within 60 hours of the date of the notification of the consultation. The failure by Europol to reply within the deadline shall be considered as a positive opinion on the application.*

### *Article 9d*

### Responsibilities of Europol

Europol shall adapt its information system to ensure that automatic processing of the queries referred to in Article 9a(3) and Article 22b(2) is possible."

(13)    ~~In~~ Article 13 *is amended as follows*~~, the following paragraph 4  is added~~:

   *(a) point (b) in paragraph 1 is replaced by the following:*

*"(b) authority that annulled or revoked the visa;"*

   *(b) the following paragraph 4 is added:*

"4.    When the application file is updated pursuant to paragraphs 1 and 2, the VIS shall send a notification to the Member State that issued the visa, informing of the decision to annul or revoke that visa. Such notification shall be generated automatically by the central system and transmitted via the mechanism provided in Article 16.";

(14)    Article 15 is amended as follows:

   (a) in paragraph 2, the following point (ea) is inserted:

"ea) facial image;";

    (b) the following paragraph 2a is inserted:

"2a. The facial image referred to in point (ea) of paragraph 2 shall not be the only search criterion.";

   *(c) in paragraph 5, the words "Article 20" are replaced by the words "Article 6a".*

(15)    In Article 16, paragraphs 2 and 3 are replaced by the following:

"2. When an application file is created in the VIS regarding a national of a specific third country or belonging to a specific category of such nationals for which prior consultation is requested pursuant to Article 22 of Regulation (EC) No 810/2009, the VIS shall automatically transmit the request for consultation to the Member State or the Member States indicated.

The Member State or the Member States consulted shall transmit their response to the VIS, which shall transmit that response to the Member State which created the application.

Solely for the purpose of carrying out the consultation procedure, the list of Member States requiring that their central authorities be consulted by other Member States' central authorities during the examination of visa applications for uniform visas lodged by nationals of specific third countries or specific categories of such nationals, according to Article 22 of Regulation (EC) No 810/2009, and of the third country nationals concerned, shall be integrated into the VIS. *The VIS shall provide the functionality for the centralised management of this list."*

3. The procedure set out in paragraph 2 shall *mutatis mutandis* also apply to:

(a) the transmission of information pursuant to *Article 24(2) on data amendments as well as* Article 25(4) *and Article 31 of Regulation (EC) No 810/2009, respectively* on the issuing of visas with limited territorial validity, ~~Article 24(2) on data amendments~~ and ~~Article 31 of Regulation (EC) No 810/2009~~ on ex post notifications;

(b) all other messages related to consular cooperation that entail transmission of personal data recorded in the VIS or related to it, to the transmission of requests to the competent visa authority to forward copies of travel documents pursuant to point 7 of Article 9 and other documents supporting the application and to the transmission of electronic copies of those documents, as well as to requests pursuant to ~~Article 9c and~~ Article 38(3). The competent visa authorities shall respond to any such reques*ts* within ~~two~~ *seven calendar* working days.";

(16) Article 17 is deleted;

(17) the title of Chapter III is replaced by the following:

"ACCESS TO ~~SHORT STAY~~ VISA DATA BY OTHER AUTHORITIES"

(18) ~~In~~ Article 18 *is amended as follows*~~(6) the second subparagraph is replaced by the following~~:

*(a) in paragraph 4, point (b), the word "photographs" is replaced by the words "facial images";*

*(b) in paragraph 5, point (b), the word "photographs" is replaced by the words "facial images";*

*(c) in paragraph 6, the second subparagraph is replaced by the following:*

"The competent authorities for carrying out checks at borders at which the EES is operated shall verify the fingerprints of the visa holder against the fingerprints recorded in the VIS. For visa holders whose fingerprints cannot be used, the search mentioned under paragraph 1 shall be carried out with the alphanumeric data foreseen under paragraph 1 *in combination with the facial image*.";

*(d) in paragraph 8, the words "Article 20" are replaced by the words "Article 6a".*

*(18a) Article 20 is deleted;*

(19) ~~the following Article 20a is inserted:~~

~~*"Article 20a*~~

~~*Use of VIS data for the purpose of entering SIS alerts on missing persons and the subsequent*~~

~~*access to those data*~~

~~1. Fingerprint data stored in the VIS may be used for the purpose of entering an alert on missing persons in accordance with Article 32(2) of Regulation (EU) … of the European Parliament and of the Council\* [*Regulation (EU) on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters*]. In those cases, the exchange of fingerprint data shall take place via secured means to the SIRENE bureau of the Member State owning the data.~~

2. ~~Where there is a hit against a SIS alert as referred to in paragraph 1, child protection authorities and national judicial authorities, including those responsible for the initiation of public prosecutions in criminal proceedings and for judicial inquiries prior to charge and their coordinating authorities, as referred to *in Article 43 of* Regulation (EU) … *[COM(2016) 883 final – SIS LE],* may request, in the performance of their tasks, access to the data entered in VIS. The conditions provided for in Union and national legislation shall apply.~~

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~~\* Regulation (EU) .. of the European Parliament and of the Council of … (OJ L .., p. …).";~~

*(19a) Article 21 is amended as follows:*

*(a) the second subparagraph in paragraph 1 is replaced by the following:*

*"Where the fingerprints of the asylum seeker cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 9(4)(a) and/or (c) and/or Article 9(5); this search may be carried out in combination with the data referred to in Article 9(4)(b). However, the facial image shall not be the only search criterion."*

*(b) in paragraph 2, point (b) is replaced by the following:*

*"(b) the data taken from the application form referred to in Article 9(4)(a) and (aa);"*

*(c) in paragraph 2, point (f), the word "photographs" is replaced by the words "facial images";*

*(d) in paragraph 2, the following point is inserted between points (f) and (g):*

*"(fa) the data entered in respect of any visa issued, annulled, revoked, or whose validity is extended, referred to in Articles 10, 13 and 14;"*

*(e) in paragraph 2, point (g) is replaced by the following:*

*"(g) the data referred to in Article 9(4)(a) and (aa) of the linked application file(s) on the spouse and children."*

(20) ~~in~~ Article 22~~, paragraph 2 is replaced by the following~~ *is amended as follows*:

*(a) the second subparagraph in paragraph 1 is replaced by the following:*

*Where the fingerprints of the asylum seeker cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 9(4)(a) and/or (c) and/or Article 9(5); this search may be carried out in combination with the data referred to in Article 9(4)(b). However, the facial image shall not be the only search criterion.*

*(b) paragraph 2 is replaced by the following:*

"2. If the search with the data listed in paragraph 1 indicates that data on the applicant for international protection is recorded in the VIS, the competent asylum authority shall have access to consult the following data of the applicant and of any linked application files of the applicant pursuant to Article 8(3), for the sole purpose referred to in paragraph 1:

(a) the application number;

(b) the data taken from the application form(s), referred to in points *(4), (5) and (7) of Article 9;*

(c) *facial images* ~~photographs~~;

(d) the data entered in respect of any visa issued, annulled, revoked, or whose validity is extended, referred to in Articles 10, 13 and 14;

(e) the data referred to in points *(4) and (5)* of Article 9 of the linked application files pursuant to Article 8(4).";

(21)     Article 23 is replaced by the following:

"*Article 23*

*Retention period for data storage*

1.     Each file shall be stored in the VIS for a maximum of five years, without prejudice to the deletion referred to in Articles 24 and 25 and to the keeping of records referred to in Article 34.

That period shall start:

> (a) on the expiry date of the visa, the long-stay visa or the residence permit, if a visa, a long-stay visa or a residence permit has been issued;
>
> (b) on the new expiry date of the visa, the long-stay visa ~~or the residence permit~~, if a visa *or* ~~,~~ a long-stay visa ~~or a residence permit~~ has been extended;
>
> (c) on the date of the creation of the *withdrawal by the document holder or the decision of the responsible authority* ~~application file~~ in the VIS, if the application has been withdrawn, closed or discontinued;
>
> (d) on the date of the decision of the responsible authority if a visa, a long-stay visa or a residence permit has been refused, annulled, ~~shortened,~~ withdrawn or revoked, as applicable.

2.     Upon expiry of the period referred to in paragraph 1, the VIS shall automatically erase the file and the link(s) to this file as referred to in Article 8(3) and (4) and Article ~~22a~~ 22a(3) ~~and (5)~~.";

(22)     in Article 24, paragraph 2 is replaced by the following:

"2. If a Member State has evidence to suggest that data processed in the VIS are inaccurate or that data were processed in the VIS contrary to this Regulation, it shall inform the Member State responsible immediately. Such message shall be transmitted in accordance with the procedure in Article 16(3).

Where the inaccurate data refers to links created pursuant to Article 8(3) or (4), and Article 22a(3), *or where a link is missing* the responsible Member State shall make the necessary verifications and provide an answer within *three working days* 48 hours, and, as the case may be, rectify the link. If no answer is provided within the set timeframe, the requesting Member State shall rectify the link and notify the responsible Member State of the rectification made via VISMail.";

(23)     Article 25 is amended as follows:

        (a) paragraph 1 is replaced by the following:

"1. Where, before expiry of the period referred to in Article 23(1), an applicant has acquired the nationality of a Member State, the application files, the files and the links referred to in Article 8(3) and (4) *and in,* Article 22a(3) relating to him or her shall be erased without delay from the VIS by the Member State which created the respective application file(s) and links.";

        (b) in paragraph 2, the words "infrastructure of the VIS" are replaced by "the VISMail" *is replaced by the following:*.

*"2.  Each Member State shall inform the Member State(s) responsible without delay if an applicant has acquired its nationality. Such message shall be transmitted by the VISMail."*

(24)     in Article 26, the following paragraph 8*a* is inserted:

"8*a*. *The Management Authority*Eu-LISA shall be permitted to use anonymised real personal data of the VIS production system for testing purposes in the following circumstances:

(a) for diagnostics and repair when faults are discovered with the *VIS operation*Central System;

(b) for testing new technologies and techniques relevant to enhance the performance of the Central System or transmission of data to it *the VIS operation*.

In such cases, the security measures, access control and logging activities at the testing environment shall be equal to the ones for the VIS production system. Real personal data adopted for testing shall be rendered anonymous in such a way that the data-subject is no longer identifiable.";

(25)     Article 27 is replaced by the following:

"*Article 27*

*Location of the central Visa Information System*

The principal central VIS, which performs technical supervision and administration functions, shall be located in Strasbourg (France) and a back-up central VIS, capable of ensuring all functionalities of the principal central VIS, shall be located in Sankt Johann im Pongau (Austria).

Both sites may be used simultaneously for active operation of the VIS provided that the second site remains capable of ensuring its operation in case of failure of the system.";

(26)     Article 29 is amended as follows:

> (a)  the title is replaced by the following:

"Responsibility for the use and quality of data";

> (b)  in paragraph 1, point (c) is replaced by the following:

"(c)     the data are accurate, up-to-date and of an adequate level of quality and completeness when they are transmitted to the VIS.";

> (c)  in point (a) of paragraph 2, the word "VIS" is replaced by the words "VIS or the CIR" in both instances where it appears;

> (d)  the following paragraph *2a* is inserted:

"2a. The management authority together with the Commission shall develop and maintain automated data quality control mechanisms and procedures for carrying out quality checks on the data in VIS and shall provide regular reports to the Member States. The management authority shall *also* provide a ~~regular~~ report *at least once a year* to the Member *S*states and Commission on the data quality controls.

This mechanism, procedures and the interpretation of data quality compliance shall be established by means of implementing measures in accordance with the procedure referred to in Article 49(2).";

(27)     the following Article 29a is inserted:

"*Article 29a*
*Specific rules for entering data*

1.  Entering data referred to in Articles 9 *to 14*, *22a, and* 22c *to* ~~and~~ 22e*d* into the VIS shall be subject to the following ~~preliminary~~ conditions:

> (a) data pursuant to Articles 9 *to 14*, *22a, and* 22c *to* ~~and~~ 22e*d* and Article 6(4) may only be sent to the VIS following a quality check performed by the responsible national authorities;

> (b) data pursuant to Articles 9 *to 14*, *22a, and* 22c *to* ~~and~~ 22e*d* and Article 6(4) will be processed by the VIS, following a quality check performed by the VIS pursuant to paragraph 2.

2. Quality checks shall be performed by VIS, as follows:

(a) when creating application files or files of third country nationals in VIS, quality checks shall be performed on the data referred to in Articles 9 *to 14*, *22a, and* 22c *to* ~~and~~ 22*e*d; should these checks fail to meet the established quality criteria, the responsible authority(ies) shall be automatically notified by the VIS;

(b) the automated procedures pursuant to Article 9~~(a)~~(3) and 22b(2) may be triggered by the VIS only following a quality check performed by the VIS pursuant to this Article; should these checks fail to meet the established quality criteria, the responsible authority(ies) shall be automatically notified by the VIS;

(c) quality checks on facial images and ***fingerprints*** ~~dactylographic data~~ shall be performed when creating application files of third country nationals in VIS, to ascertain the fulfilment of minimum data quality standards allowing biometric matching;

(d) quality checks on the data pursuant to Article 6(4) shall be performed when storing information on the national designated authorities in the VIS.

3. Quality standards shall be established for the storage of the data referred to in paragraph 1 and 2 of this Article. The specification of these standards shall be laid down in implementing acts. Those implementing acts shall be adopted ~~i~~ in accordance with the examination procedure referred to in Article 49(2).";

(28) ~~in~~ Article 31 *is amended as follows*~~, paragraphs 1 and 2 are replaced by the following~~:

(b) *paragraph 1 is replaced by the following:*

*"1. 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.*

*By way of derogation from the first subparagraph, and w*~~W~~ithout prejudice to Regulation (EU) 2016/679, the data referred to in Article 9(4)(a) *to*~~, (b),~~ (c**c**), (k) and (m) *and*~~;~~ *Article* 9(5*6*) *to*~~and~~ 9(7) *or Article 22a(1) points (d) to (k)* may be transferred or made available to a third country or to an international organisation listed in the Annex,  only if necessary in individual cases for the purpose of proving the identity of third-country nationals, and only for the purpose of return in accordance with Directive 2008/115/EC*,* ~~or~~ of resettlement in accordance with the *Regulation* …[*Resettlement Framework Regulation*]_*or of national resettlement schemes*~~,~~ and provided that the Member State which entered the data in the VIS has given its approval.";

(c) *paragraph 2 is replaced by the following:*

*"2. Personal data obtained from the VIS by a Member State or by Europol for law enforcement purposes shall not be transferred or made available to any third country, international organisation or private entity established in or outside the Union. The prohibition shall also apply where those data are further processed at national level or between Member States pursuant to Directive (EU) 2016/680."*

*(d)    the following paragraph 2a is inserted:*

*"2a. By way of derogation from paragraph 2, the data referred to in points (a) to (cc) of Article 9(4), points (d) to (g) of Article 22a(1) may be transferred by the designated authority to a third country in individual cases, only where all of the following conditions are met:*

*(a) there is an exceptional case of urgency where there is:*

> *(i) an imminent danger associated with a terrorist offence; or*

> *(ii) an imminent danger to the life of a person and that danger is associated with a serious criminal offence;*

*(b) the transfer of data is necessary for the prevention, detection or investigation in the territory of the Member States or in the third country concerned of such a terrorist offence or serious criminal offence;*

*(c) the designated authority has access to such data in accordance with the procedure and the conditions set out in Articles 22m and 22n;*

*(d) the transfer is carried out in accordance with the applicable conditions set out in Directive (EU) 2016/680, in particular Chapter V thereof;*

*(e) a duly motivated written or electronic request from the third country has been submitted.*

*Where a transfer is made pursuant to the first subparagraph of this paragraph, such a transfer shall be documented and the documentation shall, on request, be made available to the supervisory authority established in accordance with Article 41(1) of Directive (EU) 2016/680, including the date and time of the transfer, information about the receiving competent authority, the justification for the transfer and the personal data transferred."*

(29)     Article 34 is replaced by the following:

"*Article 34*
*Keeping of logs*

1. Each Member State, the European Border and Coast Guard Agency and the Management Authority shall keep logs of all *their* data processing operations within the VIS. These logs shall show the purpose of access referred to in Article 6(1), Article *6b*20a(1), Article 22k*(1)* and Articles 15 to 22 and *22g to 22j,* the date and time, the type of data transmitted as referred to in Articles 9 to 14, the type of data used for interrogation as referred to in Article 15(2), Article 18, Article 19(1), Article *6a*20(1), Article 21(1), Article 22(1), Article *22g, Article 22h, Article 22i, Article 22j,* Article 45a, and Article 45d and the name of the authority entering or retrieving the data. In addition, each Member State shall keep logs of the staff duly authorised to enter or retrieve the data.

2. For the operations listed in Article 45b  a log of each data processing operation carried out within the VIS and the EES shall be kept in accordance with this Article and Article 41 of the Regulation (EU) 2226/2017 establishing an Entry/Exit System (EES).

3. Such *logs* may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security. The logs shall be protected by appropriate measures against unauthorised access and ***modification and shall be*** deleted after a period of one year after the retention period referred to in Article 23(1) has expired, if they are not required for monitoring procedures which have already begun.";

*(29a) The following Article 36a and 36b are inserted:*

*"Article 36a*

*Data protection*

*1. Regulation (EC) No 45/2001 shall apply to the processing of personal data by the European Border and Coast Guard Agency and the Management Authority.*

*2. Regulation (EU) 2016/679 shall apply to the processing of personal data by the visa authorities assessing applications and carrying out verifications pursuant to Articles 9c, 9ca and 22b, by border authorities and by immigration authorities.*

*Where the visa authority decides on the issue, refusal, revocation or annulment of a visa, Regulation (EU) 2016/679 shall apply.*

*3. Directive (EU) 2016/680 shall apply to the processing of personal data by Member States' designated authorities for the purposes of Article 2(1)(h) and 2(2)(c) of this Regulation and to the processing of personal data by Member States` competent authorities as defined in Article 3(7) of Directive (EU) 2016/680 for the purposes of Article 6a and 22h of this Regulation.*

*4. Regulation (EU) 2016/794 shall apply to the processing of personal data by Europol pursuant to Articles 9ca and 22b of this Regulation."*

*Article 36b*

*Data processor*

*1. The European Border and Coast Guard Agency and the Management Authority, respectively, are to be considered processor in accordance with point (e) of Article 2 of Regulation (EU) No …./2018[38] in relation to the processing of personal data in the VIS.*

*2. The Management Authority shall ensure that the VIS is operated in accordance with this Regulation."*

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[38] ***Add reference to the new Regulation replacing Regulation (EC) No 45/2001***

(30)     Article 37 is amended as follows:

(a) in paragraph 1, the introductory sentence 1 is replaced by the following:

"Third country nationals and the persons referred to in Articles 9(4)(f)~~, 22c(2)(e) or 22d(e)~~ shall be informed of the following by the Member State responsible:";

*(aa) point (c) of paragraph 1 is replaced by the following:*

*"(c) the categories of recipients of the data, including the authorities referred to in Article~22k and Europol;"*

*(ab) in paragraph 1, the following points are inserted, respectively, between points (c) and (d) and between points (e) and (f):*

*"(ca) the fact that the VIS may be accessed by the Member States and Europol;"*

*"(ea) the fact that personal data stored in the VIS may be transferred to a third country or an international organisation in accordance with Article 31 and to Member States in accordance with Council Decision (EU) 2017/1908\*;"*

(b) paragraph 2 is replaced by the following:

"2. The information referred to in paragraph 1 shall be provided in writing to the third country national when the data, the *facial image*~~photograph~~ and the fingerprint data as referred to in points (4), (5) and (6) of Article 9 *or points (d) to (k) of* Article 22*a*~~c~~(*1*~~2~~) ~~and Article 22d (a) to (g)~~ are collected, and where necessary, orally, in a language and manner that the data subject understands or is reasonably presumed to understand. Children must be informed in an age-appropriate manner~~, using leaflets and/or infographics and/or demonstrations specifically designed to explain the fingerprinting procedure.~~.";

(c)~~.~~ in paragraph 3, the second subparagraph is replaced by the following:

"In the absence of such a form signed by those persons this information shall be provided in accordance with Article 14 of Regulation (EU) 2016/679.";

———

*\* COUNCIL DECISION (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System in the Republic of Bulgaria and Romania*

(31)     in Article 38, ~~paragraph 3 is replaced by the following~~ *is amended as follows*:

*(a) paragraph 1 is replaced by the following:*

*"Without prejudice to Articles 15, 16, 17 and 23 of Regulation (EU) 2016/679, Articles 14, 15 and 16 of Directive (EU) 2016/680, Article 53 of Regulation [XXX] on SIS in the field of border checks, Article 67 of Regulation [XXX] on SIS in the field of police cooperation and judicial cooperation in criminal matters and Interpol's Rules on the Processing of Personal Data, any person shall have the right to obtain communication of the data relating to him recorded in the VIS and of the Member State which transmitted them to the VIS. Such access to data may be granted only by a Member State. Each Member State shall record any requests for such access."*

*(b) paragraph 3 is replaced by the following:*

"3. If the request as provided for in paragraph 2 is made to a Member State other than the Member State responsible *for the application*, the authorities of the Member State with which the request was lodged shall contact the authorities of the Member State responsible *for the application* within a period of  seven days. The Member State responsible shall check the accuracy of the data and the lawfulness of their processing in the VIS within a period of one month.";

*(c) a new paragraph 3a is inserted:*

*"3a. A Member State responsible for the application may provide to the data subject information concerning any of the data subject's personal data in the ETIAS watchlist, in Interpol's TDAWN in Europol's data or in SIS, except alerts in respect of third-country nationals subject to a refusal of entry and stay, only if the Member State/Europol which entered the data in the these databases has given its position regarding the access request to the Member State responsible for the application."*

*(d) a new paragraph 7 is inserted:*

*"A Member State shall take a decision not to provide information to the data subject, in whole or in part, in accordance with national law, to the extent that, and for as long as such a partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the data subject concerned, in order to:*

*(a)     avoid obstructing official or legal inquiries, investigations or procedures;*

*(b)     avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;*

*(c)     protect public security;*

*(d)     protect national security; or*

*(e)     protect the rights and freedoms of others.*

*In cases referred to in the first subparagraph, the Member State shall inform the data subject in writing, without undue delay, of any refusal or restriction of access and of the reasons for the refusal or restriction. Such information may be omitted where its provision would undermine any of the reasons set out in points (a) to (e) of the first subparagraph. The Member State shall inform the data subject of the possibility of lodging a complaint with a supervisory authority or of seeking a judicial remedy.*

*The Member State shall document the factual or legal reasons on which the decision not to provide information to the data subject is based. That information shall be made available to the supervisory authorities.*

*For such cases, the data subject shall also be able to exercise his or her rights through the competent supervisory authorities in accordance with national legislation."*

(32)     in Article 43, paragraphs 1 and 2 are replaced by the following:

"1. The European Data Protection Supervisor shall act in close cooperation with national supervisory authorities with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national supervisory authority finds major discrepancies between practices of Member States or finds potentially unlawful transfers using the communication channels of the interoperability components, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.

2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) XXXX/2018 [revised Regulation 45/2001].";

(33)     in Article 45, the following paragraph 3 is added:

"3. The technical specifications for the quality, resolution and use of fingerprints and of the facial image for biometric verification and identification in the VIS shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).";

(34)     the following Article 45a is inserted:

*"Article 45a*
*Use of data for reporting and statistics*

1.   The duly authorised staff of the competent authorities of Member States, the Commission, ***the Management Authority***eu-LISA and the European Border and Coast Guard Agency established by Regulation (EU) 2016/1624 shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing for individual identification:

   (a)     status information;

(b)     the competent authority, including its location;

(c)     sex, date of birth and ~~current~~ nationality/***nationalities*** of the applicant;

(d)     Member State of first entry, only as regards ~~short stay~~ visas***, if applicable***;

(e)     date and place of the application and the decision concerning the application ~~(issued or refused)~~;

(f)     the type of document issued, i.e. whether ***airport transit visa***~~ATV~~, uniform or ***limited territorial validity visa***~~LTV~~, long stay visa or residence permit;

(g)     the type of the travel document ~~and the three letter code of the issuing country~~, only as regards ~~short stay~~ visas;

(h)     the grounds indicated for any decision concerning the document or the application, only as regards ~~short stay~~ visas; as regards long stay visas and residence permits, the decision concerning the application (whether to issue or to refuse the application and on which ground);

(i)     the competent authority, including its location, which refused the application and the date of the refusal, only as regards ~~short stay~~ visas;

(j)     the cases in which the same applicant applied for a ~~short stay~~ visa from more than one visa authority, indicating these visa authorities, their location and the dates of refusals~~, only as regards short stay visas~~;

**(k)**   *a*~~A~~s regards ~~short stay~~ visa*s*, main purpose(s) of the journey~~; as regards long stay visas and residence permit, the purpose of the application~~;

*(ka)*  ***visa applications processed in representation pursuant to Article 8 of Regulation (EC) No 810/2009;***

(l)     the data entered in respect of any document withdrawn, annulled, revoked or whose validity is extended, as applicable;

(m)    ~~where applicable,~~ the expiry date of the long stay visa or residence permit;

(n)     the number of persons exempt from the requirement to give fingerprints pursuant to Article 13(7) of Regulation (EC) No 810/2009.

(o)     the cases in which the data referred to in point (6) of Article 9 could factually not be provided, in accordance with the second sentence of Article 8(5);

(p)     the cases in which the data referred to in point (6) of Article 9 was not required to be provided for legal reasons, in accordance with the second sentence of Article 8(5);

**(q)** the cases in which a person who could factually not provide the data referred to in point (6) of Article 9 was refused a visa, in accordance with the second sentence of Article 8(5)*;*

*(r)* *the cases in which a person who applied for a visa, a long-stay visa or a residence permit are found in Eurodac in the course of the query in accordance with Article 9a(3) or 22b(2);*

*(s)* *as regards visas, links to the previous application file on that applicant as well as links of the application files of the persons travelling together.*

The duly authorised staff of the European Border and Coast Guard Agency shall have access to consult the data referred to in the first subparagraph for the purpose of carrying out risk analyses and vulnerability assessments as referred to in Articles 11 and 13 of Regulation (EU) 2016/1624.

2.     For the purpose of paragraph 1 of this Article, *the Management Authority*eu-LISA shall store the data referred to in that paragraph in the central repository for reporting and statistics referred to in [Article 39 of the Regulation 2018/XX [*on interoperability*]

3.     The procedures put in place by *the Management Authority*eu-LISA to monitor the functioning of the VIS referred to in Article 50(1) shall include the possibility to produce regular statistics for ensuring that monitoring.

4.     Every quarter, *the Management Authority*eu-LISA shall compile statistics based on the VIS data on ~~short stay~~ visas *referred to in Article 4, point 1* showing, for each location where a visa was lodged, in particular:

(a)     *number of airport transit (A) visas, as referred to in point 5 of Article 2 of Regulation (EC) No 810/2009, applied for; number of A visas issued, disaggregated by single airport transit and multiple airport transits; number of A visas refused*~~total of airport transit visas applied for, including for multiple airport transit visas~~;

(b)     *number of short-stay (C) visas, as referred to in point 2(a) of Article 2 of Regulation (EC) No 810/2009, applied for (and disaggregated by the main purpose of the journey); number of C visas issued, disaggregated by issued for single entry or multiple entry and the latter divided by length of validity (6 months or below, 1 year, 2 years, 3 years, 4 years, 5 years); number of visas with limited territorial validity issued (LTV); number of C visas refused*~~total of visas issued, including multiple A visas~~;

~~(c)     total of multiple visas issued;~~

~~(d)     total of visas not issued, including multiple A visas;~~

~~(e)     total of uniform visas applied for, including multiple-entry uniform visas;~~

~~(f)     total of visas issued, including multiple-entry visas;~~

(g) ~~total of multiple entry visas issued, devided by length of validity (below 6 months, 1 year, 2 years, 3 years, 4 years, 5 years),~~

(h) ~~total of uniform visas not issued, including multiple-entry visas;~~

(i) ~~total of visas with limited territorial validity issued.~~

The daily statistics shall be stored in the central repository for reporting and statistics.

5. Every quarter, *the Management Authority*~~eu-LISA~~ shall compile statistics based on the VIS data on long-stay visas and residence permits showing, for each location, in particular:

(a) total of long-stay visas applied for, issued, refused, extended and withdrawn;

(b) total of residence permits applied for, issued, refused, extended and withdrawn.

6. At the end of each year, statistical data shall be compiled in the form of quarterly statistics for that year. The statistics shall contain a breakdown of data for each Member State.

7. At the request of the Commission, *the Management Authority*~~eu-LISA~~ shall provide it with statistics on specific aspects related to the implementation of the common visa policy or of the migration *and asylum* policy, including on aspects pursuant to the application of Regulation (EU) No 1053/2013.";

(35) the following Articles 45b, 45c, 45d and 45e are inserted:

"Article 45b

*Access to data for verification by carriers*

1. In order to fulfil their obligation under point (b) of Article 26(1) of the Convention implementing the Schengen Agreement, air carriers, sea carriers and international carriers transporting groups overland by coach shall send a query to the VIS in order to verify whether or not third country nationals *subject to*~~holding a short-stay~~ visa, ~~a~~ long stay visa or ~~a~~ residence permit are in possession of a valid ~~short stay~~ visa, long stay visa or residence permit, as applicable. For this purpose, as regards ~~short stay~~ visas, carriers shall provide the data listed under points (a), (b) and (c) of Article 9(4) of this Regulation *and, as regards long-stay visa or residence permit the data listed*~~or~~ under points (*d*~~a~~), (*e*~~b~~) and (**f**~~e~~) of Article 22*a(1)*~~c, as applicable~~.

2. For the purpose of implementing paragraph 1 or for the purpose of resolving any potential dispute arising from its application, *the Management Authority*~~eu-LISA~~ shall keep logs of all data processing operations carried out within the carrier gateway by carriers. Those logs shall show the date and time of each operation, the data used for interrogation, the data transmitted by the carrier gateway and the name of the carrier in question.

Logs shall be stored for a period of two years. Logs shall be protected by appropriate measures against unauthorised access.

3.	Secure access to the carrier gateway referred to in Article 1(2) (h) of Decision 2004/512/EC ~~as amended by this Regulation~~ shall allow carriers to proceed with the query consultation referred to in paragraph 1 prior to the boarding of a passenger. For this purpose, the carrier shall send the query to be permitted to consult the VIS using the data contained in the machine readable zone of the travel document.

4.	The VIS shall respond by indicating whether or not the person has a valid visa, ***long-stay visa or residence permit*** providing the carriers with an OK/NOT OK answer.

5.	An authentication scheme, reserved exclusively for carriers, shall be set up in order to allow access to the carrier gateway for the purposes of paragraph 2 to the duly authorised members of the carriers' staff. The authentication scheme shall be adopted by the Commission by means of implementing acts in accordance with the examination procedure referred to in Article 49(2).

Article 45c

*Fall-back procedures in case of technical impossibility to access data by carriers*

1.	Where it is technically impossible to proceed with the consultation query referred to in Article 45b(1), because of a failure of any part of the VIS or for other reasons beyond the carriers' control, the carriers shall be exempted of the obligation to verify the possession of ***holding*** a valid visa***, long-stay visa*** or ***residence permit***~~travel document~~ by using the carrier gateway. Where such failure is detected by the Management Authority, it shall notify the carriers. It shall also notify the carriers when the failure is remedied. Where such failure is detected by the carriers, they may notify the Management Authority. ***The Management Authority shall inform the Member States without delay about the notification of the carriers.***

2.	The details of the fall-back procedures shall be laid down in an implementing act adopted in accordance with the examination procedure referred to in Article 49(2).

Article 45d

*Access to VIS data by European Border and Coast Guard teams*

1. To exercise the tasks and powers pursuant to Article 40(1) of Regulation (EU) 2016/1624 of the European Parliament and of the Council* and in addition to the access provided for in Article 40(8) of that Regulation, the members of the European Border and Coast Guard teams, as well as teams of staff involved in return-related operations, shall, within their mandate, have the right to access and search data entered in VIS.

2. To ensure  the access referred to in paragraph 1, the European Border and Coast Guard Agency shall designate a specialised unit with duly empowered European Border and Coast Guard officials as the central access point. The central access point shall verify that the conditions to request access to the VIS laid down in Article 45e are fulfilled.

_____

* Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

Article 45e

*Conditions and procedure for access to VIS data by European Border and Coast Guard teams*

1. In view of the access referred to in paragraph 1 of Article 45d, a European Border and Coast Guard team may submit a request for the consultation of all data or a specific set of data stored in the VIS to the European Border and Coast Guard central access point referred to in Article 45d(2). The request shall refer to the operational plan on border checks, border surveillance and/or return of that Member State on which the request is based. Upon receipt of a request for access, the European Border and Coast Guard central access point shall verify whether the conditions for access referred to in paragraph 2 are fulfilled. If all conditions for access are fulfilled, the duly authorised staff of the central access point shall process the requests. The VIS data accessed shall be transmitted to the team in such a way as not to compromise the security of the data.

2. For the access to be granted, the following conditions shall apply:

a) the host Member State authorises the members of the team to consult VIS in order to fulfil the operational aims specified in the operational plan on border checks, border surveillance and return, and

b) the consultation of VIS is required for performing the specific tasks entrusted to the team by the host Member State.

3. In accordance with Article 40(3) of Regulation (EU) 2016/1624, members of the teams, as well as teams of staff involved in return-related tasks may only act in response to information obtained from the VIS under instructions from and, as a general rule, in the presence of border guards or staff involved in return-related tasks of the host Member State in which they are operating. The host Member State may authorise members of the teams to act on its behalf.

4. In case of doubt or if the verification of the identity of the visa holder, long stay visa holder or residence permit holder fails, the member of the European Border and Coast Guard team shall refer the person to a border guard of the host Member State.

5. Consultation of the VIS data by members of the teams shall take place as follows:

a)      When exercising tasks related to border checks pursuant to Regulation (EU) 2016/399, the members of the teams shall have access to VIS data for verification at external border crossing points in accordance with Articles 18 or 22g of this Regulation respectively;

b)      When verifying whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, the members of the teams shall have access to the VIS data for verification within the territory of third country nationals in acordance with Articles 19 or 22h of this Regulation respectively;

c)      When identifying any person that may not or may no longer fulfil the conditions for the entry to, stay or residence on the territory of the Member States, the members of the teams shall have access to VIS data for identification in accordance with Article 20 of this Regulation.

6. Where such access and search reveal the existence of a hit in VIS, the host Member State shall be informed thereof.

7. Every log of data processing operations within the VIS by a member of the European Border and Coast Guard teams or teams of staff involved in return-related tasks shall be kept by the Management Authority in accordance with the provisions of Article 34.

8. Every instance of access and every search made by the European Border and Coast Guard Agency shall be logged in accordance with the provisions of Article 34 and every use made of data accessed by the European Border and Coast Guard Agency shall be registered.

9. Except where necessary to perform the tasks for the purposes of the Regulation establishing a European Travel Information and Authorisation System (ETIAS), no parts of VIS shall be connected to any computer system for data collection and processing operated by or at the European Border and Coast Guard Agency nor shall the data contained in VIS to which the European Border and Coast Guard Agency has access be transferred to such a system. No part of VIS shall be downloaded. The logging of access and searches shall not be construed as constituting to be the downloading or copying of VIS data.

10. Measures to ensure security of data as provided for in Articles 32 shall be adopted and applied by the European Border and Coast Guard Agency."

(36)    Article 49 is replaced by the following:

*"Article 49*

*Committee procedure*

1.      The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the  European  Parliament  and  of the Council*.

2.      Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. ***Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.***

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* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).";

(37)    the following Article 49a is inserted:

*"Article 49a*
*Advisory group*

An Advisory Group shall be established by eu-LISA and provide it with the expertise related to the VIS in particular in the context of the preparation of its annual work programme and its annual activity report." ;

(38)    Article 50 is replaced by the following:

*"Article 50*

*Monitoring and evaluation*

1.    The Management Authority shall ensure that procedures are in place to monitor the functioning of the VIS against objectives relating to output, cost-effectiveness, security and quality of service.

2.    For the purposes of technical maintenance, the Management Authority shall have access to the necessary information relating to the processing operations performed in the VIS.

3.    Every two years **the Management Authority**eu-LISA shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of VIS, including the security thereof.

4.    While respecting the provisions of national law on the publication of sensitive information, each Member State and Europol shall prepare annual reports on the effectiveness of access to VIS data for law enforcement purposes containing information and statistics on:

(a)    the exact purpose of the consultation including the type of terrorist or serious criminal offence;

(b)    reasonable grounds given for the substantiated suspicion that the suspect, perpetrator or victim is covered by this Regulation;

(c)    the number of requests for access to the VIS for law enforcement purposes;

(d)    the number and type of cases which have ended in successful identifications.

Member States' and Europol's annual reports shall be transmitted to the Commission by 30 June of the subsequent year.

***4a.*** ***A technical solution shall be made available to Member States in order to facilitate the querying of VIS for the purpose of managing users request and generating statistics. The Commission shall adopt implementing acts concerning the specifications of the technical solution. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 49(2).***

5. Every four years, the Commission shall produce an overall evaluation of the VIS. This overall evaluation shall include an examination of results achieved against objectives and an assessment of the continuing validity of the underlying rationale, the application of this Regulation in respect of the VIS, the security of the VIS, the use made of the provisions referred to in Article 31 and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.

6. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraph 3, 4 and 5.

7. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.";

(39) The title of annex 1 is replaced by the following:

"List of international organisations referred to in Article 31(1)".

(40) After Article 22, the following chapters IIIa and IIIb are inserted:

CHAPTER IIIa

ENTRY AND USE OF DATA ON LONG STAY VISAS AND RESIDENCE PERMITS

*Article 22a*

Procedures for entering data upon ~~decision on an~~ application for a long stay visa or residence permit

1. Upon ~~decision on an~~ application for a long stay visa or residence permit, the ***competent*** authority ~~that issued that decision~~ shall create without delay ***an application*** the ~~individual~~ file, by entering the ***following*** data ~~referred to in Article 22c or Article 22d~~ in the VIS ***as far as those data are required to be provided by the applicant in accordance with the relevant Union or national legislation:***.

   ***a. application number;***

   ***b. status information, indicating that a long stay visa or residence permit has been requested;***

   ***c. the authority with which the application has been lodged, including its location;***

*d. surname (family name); first name(s); date of birth; current nationality or nationalities; sex; place of birth;*

*e. type and number of the travel document;*

*f. the date of expiry of the validity of the travel document;*

*g. the country which issued the travel document and its date of issue;*

*h. a scan of the biographic data page of the travel document;*

*i. in the case of minors, surname and first name(s) of the holder's parental authority or legal guardian;*

*j. a facial image of the holder, where possible taken live or a photograph;*

*k. fingerprints of the holder.*

2.    Upon creation of the ***application*** ~~individual~~ file, the VIS shall automatically launch the query pursuant to Article 22b.

3.    If the holder has applied as part of a group or with a family member, the authority shall create an ***application*** ~~individual~~ file for each person in the group and link the files of the persons having applied together ***for the*** ~~and who were issued a~~ long stay visa or residence permit.

4.    Where particular data are not required to be provided in accordance with Union or national legislation or factually cannot be provided, the specific data field(s) shall be marked as 'not applicable'. In the case of fingerprints, the system shall permit a distinction to be made between the cases where fingerprints are not required to be provided in accordance with Union or national legislation and the cases where they cannot be provided factually.

*Article 22b*

Queries to other systems

1.    Solely for the purpose of assessing whether the person could pose a threat to the public policy, or internal security or public health of the Member States, pursuant to Article 6(1)(e) of Regulation (EU) 2016/399, the files shall be automatically processed by the VIS to identify hit(s). The VIS shall examine each file individually.

2.       Every time an *application* ~~individual~~ file is created *in accordance with Article 22a* ~~upon issuance or refusal pursuant to Article 22d of a long stay visa or residence permit,~~ the VIS ~~shall~~ **shall** launch a query ~~by using the European Search Portal defined in Article 6(1) of [*the Interoperability Regulation*]~~ to compare the relevant *application* data ~~referred to in Article 22c(2)(a), (b), (c), (f) and (g) of this Regulation~~ with the relevant data, in the VIS, the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS) including the *ETIAS* watchlist ~~referred to in Article 29 of Regulation (EU) 2018/XX for the purposes of establishing a European Travel Information and Authorisation System~~, *the Eurodac,* [the ECRIS-TCN system ~~as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned~~], the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD), and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN).

         *This query may be launched using, where appropriate, the European Search Portal in accordance with Chapter II [of the Interoperability Regulation].*

3.       ~~The VIS shall add a reference to any hit obtained pursuant to paragraphs (2) and (5) to the individual file. Additionally, the VIS shall identify, where relevant, the Member State(s) that entered or supplied the data having triggered the hit(s) or Europol, and shall record this in the individual file.~~ *Without prejudice to the national legislation to determine the competent authorities the procedure set out in Article 9a, 9c and 9ca shall apply accordingly.*

4.       ~~For the purposes of Article 2(2)(f) in respect of an issued or extended long stay visathe queries carried out under 22bparagraph 2 of this Article shall compare the relevant data referred to in Article 22c(2), to the data present in the SIS in order to determine whether the holder is subject to one of the following alerts:~~

         ~~(a)    an alert in respect of persons wanted for arrest for surrender purposes or extradition purposes;~~

         ~~(b)    an alert in respect of missing persons;~~

         ~~(c)    an alert in respect of persons sought to assist with a judicial procedure;~~

         ~~(d)    an alert on persons and objects for discreet checks or specific checks.~~

         ~~Where the comparison referred to in this paragraph reports one or several hit(s), the VIS shall send an automated notification to the central authority of the Member State that launched the request  and shall take any appropriate follow-up action.~~

5.       ~~As regards the consultation of EES, ETIAS and VIS data pursuant to paragraph 2, the hits shall be limited to indicating refusals of a travel authorisation, of entry or of a visa which are based on security grounds.~~

6.       ~~Where the long stay visa or residence permit is issued or extended by a consular authority of a Member State, Article 9a shall apply.~~

7. ~~Where the residence permit is issued or extended or where a long stay visa is extended by an authority in the territory of a Member State, the following apply:~~

~~(a)  that authority shall verify whether the data recorded in the individual file corresponds to the data present in the VIS, or one of the consulted EU information systems/databases, the Europol data, or the Interpol databases pursuant to paragraph 2;~~

~~(b)  where the hit pursuant to paragraph 2 is related to Europol data, the Europol national unit shall be informed for follow up;~~

~~(c)  where the data do not correspond, and no other hit has been reported during the automated processing pursuant to paragraphs 2 and 3, the authority shall delete the false hit from the application file;~~

~~(d)  where the data correspond to or where doubts remain concerning the identity of the applicant, the authority shall take action on the data that triggered the hit pursuant to paragraph 4 according to the procedures, conditions and criteria provided by EU and national legislation.~~

*Article 22c*

~~Individual~~ *Application* file to be ~~creat~~*updat*ed for a long stay visa or residence permit issued

***Where a decision has been taken to issue a long stay visa or residence permit, the competent authority that issued the long stay visa or residence permit shall add the following data to the application file where the data is collected in accordance with the relevant Union and national legislation*** ~~An individual file created pursuant to Article 22a(1) shall contain the following data:~~

~~(1)  the authority which issued the document, including its location;~~

~~(2)  the following data of the holder:~~

~~(a)  surname (family name); first name(s); date of birth; current nationality or nationalities; sex; date, place and country of birth;~~

~~(b)  type and number of the travel document and the three letter code of the issuing country of the travel document;~~

~~(c)  the date of expiry of the validity of the travel document;~~

~~(cc)  authority which issued the travel document;~~

~~(d)  in the case of minors, surname and first name(s) of the holder's parental authority or legal guardian;~~

~~(e)  the surname, first name and address of the natural person or the name and address of the employer or any other organisation on which the application was based;~~

(f) ~~a facial image of the holder, where possible taken live;~~

(g) ~~two fingerprints of the holder, in accordance with the relevant Union and national legislation;~~

(3) ~~the following data concerning the long stay visa or residence permit issued:~~

    (a) status information indicating that a long-stay visa or residence permit has been issued;

    *(aa)* ***the authority that took the decision;***

    (b) place and date of the decision ~~to issue the long-stay visa or residence permit~~;

    (c) the type of document issued (long-stay visa or residence permit);

    (d) the number of the issued long-stay visa or residence permit;

    (e) the ***commencement and*** expiry date***s*** of the long-stay visa or residence permit.

*Article 22d*

~~Individual~~ ***Application*** file to be ~~creat~~***updat***ed in certain cases of refusal of a long stay visa or

residence permit

*1.* Where a decision has been taken to refuse a long stay visa or a residence permit because the applicant is considered to pose a threat to public policy, internal security or to public health or the applicant has presented documents which were fraudulently acquired, or falsified, or tampered with, the authority which refused it shall ***add the following data to the application file where the data is collected in accordance with the relevant Union and national legislation***~~create without delay an individual file with the following data~~:

    a. ~~surname, surname at birth (former surname(s)); first name(s); sex; date, place and country of birth;~~

    b. ~~current nationality and nationality at birth;~~

    c. ~~type and number of the travel document, the authority which issued it and the date of issue and of expiry;~~

    d. ~~in the case of minors, surname and first name(s) of the applicant's parental authority or legal guardian;~~

    e. ~~the surname, first name and address of the natural personon whom the application is based;~~

f. ~~a facial image of the applicant, where possible taken live;~~

g. ~~two fingerprints of the applicant, in accordance with the relevant Union and national legislation;~~

h. information indicating that the long-stay visa or residence permit has been refused because the applicant is considered to pose a threat to public policy, public security or to public health, or because the applicant presented documents which were fraudulently acquired, or falsified, or tampered with;

i. the authority that refused the long-stay visa or residence permit~~, including its location~~;

j. place and date of the decision to refuse the long stay-visa or residence permit.

*2. Where a decision has been taken to refuse a long-stay visa or a residence permit on the basis of other reasons than the ones referred to in paragraph 1, the application file shall be deleted without delay from the VIS.*

*Article 22e*

Data to be added for a long stay visa or residence permit withdrawn*, revoked or annuled*

1. Where a decision has been taken to withdraw*, revoke or annul* a *long-stay visa or* residence permit ~~or long-stay visa or to shorten the validity period of a long stay visa~~, the authority that has taken the decision shall add the following data to the *application* ~~individual~~ file*, where the data is collected in accordance with the relevant Union and national legislation*:

(a) status information indicating that the long-stay visa or residence permit has been withdrawn*, revoked or annuled* ~~or, in the case of a long stay visa, that the validity period has been shortened~~;

(b) *the* authority that *took the decision* ~~withdrew the long-stay visa or residence permit or shortened the validity period of the long stay visa, including its location~~;

(c) place and date of the decision**.**~~;~~

(d) ~~the new expiry date of the validity of the long stay visa, where appropriate;~~

(e) ~~the number of the visa sticker, if the reduced period takes the form of a new visa sticker.~~

2. The *application* ~~individual~~ file shall also indicate the ground(s) for withdrawal*, revocation or annulment* of the long-stay visa or residence permit ~~or shortening of the validity period of the long stay visa~~, in accordance with ~~point (h) of~~ Article 22d.

*Article  22f*

Data to be added for a long stay visa ~~or residence permit~~ extended *or residence permit renewed*

Where a decision has been taken to extend *the validity of* ~~a residence permit or~~ a long-stay visa, the authority which extended it shall add the following data to the individual file*, where the data is collected in accordance with the relevant Union and national legislation*:

(a) status information indicating that the *validity of the* long-stay visa ~~or residence permit~~ has been extended;

(b) the authority that *took the decision* ~~extended the long-stay visa or residence permit, including its location~~;

(c) place and date of the decision;

(d) ~~in the case of a long stay visa,~~ the number of the visa sticker~~, if the extension of the long-stay visa takes the form of a new visa sticker~~;

(e) the expiry date of the *validity of the long-stay visa*~~extended period~~.

*Where a decision has been taken to renew a residence permit Article 22c applies.*

*Article 22g*

Access to data for verification of long stay visas and residence permits at external border crossing points

1.      For the sole purpose of verifying the identity of the document holder and/or the authenticity and the validity of the long-stay visa or residence permit and whether the person is not considered to be a threat to public policy, internal security or public health of any of the Member States in accordance with Article 6(1)(e) of Regulation (EU) 2016/399, the competent authorities for carrying out checks at external border crossing points in accordance with that Regulation shall have access to search using the number of the document in combination with one or several of the data in Article 22*a*~~c~~(*1*~~2~~)(*d*~~a~~), (*e*~~b~~)*,* ~~and~~ (*j*~~c~~) *and (k)* of this Regulation.

2.      If the search with the data listed in paragraph 1 indicates that data on the document holder are recorded in the VIS, the competent border control authority shall be given access to consult the following data of the *application* ~~individual~~ file, solely for the purposes referred to in paragraph 1:

(a)    the status information of the long-stay visa or residence permit indicating if it has been issued, withdrawn*, revoked, annuled, renewed* or extended;

(b)    data referred to in Article 22c~~(3)~~(c), (d), and (e);

(c)    ~~where applicable, data referred to in Article 22e(1)(d) and (e);~~

(d)    ~~where applicable, data~~ *facial images as* referred to in Article 22*a(1)(j)*~~f(d) and (e)~~;

**(e)**    ~~photographs~~ *fingerprints* as referred to in Article 22*a*~~e~~*(1*~~2~~*)(k*~~f~~*)*;~~.~~

*(f)    if applicable, the hit(s) pursuant to Article 22b(3) and the results of the verifications linked to those hits pursuant to Article 9c.*

*Article 22h*

Access to data for verification within the territory of the Member States

1.    For the sole purpose of verifying the identity of the holder and the authenticity and the validity of the long-stay visa or residence permit or whether the person is not a threat to public policy, internal security or public health of any of the Member States~~–~~, the authorities competent for carrying out checks within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled and, as applicable, police authorities, shall have access to search using the number of the long-stay visa or residence permit in combination with one or several of the data in Article 22*a*~~e~~*(1*~~2~~*)(d*~~a~~*)*, (*e*~~b~~*)*, *(j)* and (*k*~~e~~*) in accordance with the relevant national legislation*.

2.    If the search with the data listed in paragraph 1 indicates that data on the holder are recorded in the VIS, the competent authority shall be given access to consult the following data of the *application* ~~individual~~ file ~~as well as, if applicable, of linked file(s) pursuant to Article 22a(4)~~, solely for the purposes referred to in paragraph 1:

(a)    the status information of the long-stay visa or residence permit indicating if it has been issued, withdrawn*, renewed* or extended;

(b)    data referred to in Article 22c~~(3)~~(c), (d), and (e);

(c)    ~~where applicable, data referred to in Article 22e(1)(d) and (e);~~

(d)    where applicable, data referred to in Article 22f(d) and (e);

**(e)**    ~~photographs~~ *facial images* as referred to in Article 22*a*~~e~~*(1*~~2~~*)(j*~~f~~*)*;

*(f)    fingerprints as referred to in Article 22a(1)(k).*

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*Article 22i*

Access to data for determining the responsibility for applications for international protection

1. For the sole purpose of determining the Member State responsible for examining an application for international protection in accordance with Article 12 of Regulation (EU) No 604/2013, the competent asylum authorities shall have access to search with the fingerprints of the applicant for international protection.

   Where the fingerprints of the applicant for international protection cannot be used or the search with the fingerprints fails, the search shall be carried out using the number of the long stay visa or residence permit in combination with ***one or several of*** the data in Article 22a̶e̶(***1***2̶)(***d***a̶), (***e***b̶)***, (j)*** and (***k***c̶)***. The facial image shall not be the only search criterion.***

2. If the search with the data listed in paragraph 1 indicates that a long-stay visa or residence permit is recorded in the VIS, the competent asylum authority shall be given access to consult the following data of the application file, and as regards the data listed in point (g) of linked application file(s) of the spouse and children, pursuant to Article 22a(***3***4̶), for the sole purpose referred to in paragraph 1:

   (a) the authority that issued***, refused, annuled, revoked, renewed*** or extended the long-stay visa or residence permit;

   (b) the data referred to in Article 22a̶e̶(***1***2̶)(***d***a̶) and (***e***b̶);

   (c) the type of document;

   (d) the period of validity of the long-stay visa or residence permit;

   (f) p̶h̶o̶t̶o̶g̶r̶a̶p̶h̶s̶ ***facial images*** as referred to in Article 22a̶e̶(***1***2̶)(***j***f̶);

   ***(fa) fingerprints as referred to in Article 22a(1)(k);***

   (g) the data referred to in Article 22a̶e̶(***1***2̶)(***d***a̶) and (***e***b̶) of the linked application file(s) on the spouse and children.

3. The consultation of the VIS pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 27 of Regulation (EU) No 603/2013 of the European Parliament and of the Council*.

*Article 22j*

Access to data for examining the application for international protection

1.      For the sole purpose of examining an application for international protection, the competent asylum authorities shall have access in accordance with Article 27 of Regulation (EU) No 603/2013 to search with the fingerprints of the applicant for international protection.

Where the fingerprints of the applicant for international protection cannot be used or the search with the fingerprints fails, the search shall be carried out using the number of the long stay visa or residence document in combination with *one or several of* the data in Article 22a~~e~~(*12*)(*d*~~a~~), (*e*~~b~~), (*j*) and (*k*~~c~~)~~, or a combination of data in Article 22d(a), (b), (c) and (f)~~. *The facial image shall not be the only search criterion.*

2.      If the search with the data listed in paragraph 1 indicates that data on the applicant for international protection is recorded in the VIS, the competent asylum authority shall have access to consult, for the sole purpose referred to in paragraph 1, the data entered in respect of any long-stay visa or residence permit issued, refused, withdrawn or whose validity is extended, referred to in Articles 22c, 22d, 22e and 22f of the applicant and of the linked application file(s) of the applicant pursuant to Article 22a(3).

3.      The consultation of the VIS pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 27 of Regulation (EU) No 603/2013.

CHAPTER IIIb

Procedure and conditions for access to the VIS for law enforcement purposes

*Article 22k*
*Member States' designated authorities*

1.      Member States shall designate the authorities which are entitled to consult the data stored in the VIS in order to prevent, detect *or* ~~and~~ investigate terrorist offences or other serious criminal offences.

2.      Each Member State shall keep a list of the designated authorities. Each Member State shall notify *the Management Authority*~~eu-LISA~~ and the Commission of its designated authorities and may at any time amend or replace its notification.

3.      Each Member State shall designate a central access point which shall have access to the VIS. The central access point shall verify that the conditions to request access to the VIS laid down in Article 22n are fulfilled.

The designated authorit*ies*~~y~~ and the central access point may be part of the same organisation if permitted under national law, but the central access point shall act ~~fully~~ independently of the designated authorities when performing its tasks under this Regulation. The central access point ~~shall be separate from the designated authorities and~~ shall not receive instructions from ~~them~~ *the designated authorities* as regards the outcome of the verification which it shall perform independently.

Member States may designate more than one central access point to reflect their organisational and administrative structure in the fulfilment of their constitutional or legal requirements.

4.      Each Member State shall notify *the Management Authority* ~~eu LISA~~ and the Commission of its central access point and may at any time amend or replace its notification.

5.      At national level, each Member State shall keep a list of the operating units within the designated authorities that are authorised to request access to data stored in the VIS through the central access point(s).

6.      Only duly empowered staff of the central access point(s) shall be authorised to access the VIS in accordance with Articles 22m and 22n.

*Article 22l*
*Europol*

1.      Europol shall designate one of its operating units as 'Europol designated authority' and shall authorise it to request access to the VIS through the VIS designated central access point referred to in paragraph 2 in order to support and strengthen action by Member States in preventing, detecting and investigating terrorist offences or other serious criminal offences.

2.      Europol shall designate a specialised unit with duly empowered Europol officials as the central access point. The central access point shall verify that the conditions to request access to the VIS laid down in Article 22p are fulfilled.

The central access point shall act independently when performing its tasks under this Regulation and shall not receive instructions from the Europol designated authority referred to in paragraph 1 as regards the outcome of the verification.

*Article 22m*
*Procedure for access to the VIS ~~for law enforcement purposes~~*

1.      The operating units referred to in Article 22k(5) shall submit a reasoned electronic or written request to the central access points referred to in Article 22k(3) for access to data stored in the VIS. Upon receipt of a request for access, the central access point(s) shall verify whether the conditions for access referred to in Article 22n are fulfilled. If the conditions for access are fulfilled, the central access point(s) shall process the requests. The VIS data accessed shall be transmitted to the operating units referred to in Article 22k(5) in such a way as to not compromise the security of the data.

2.	In a case of exceptional urgency, where there is a need to prevent an imminent danger to the life of a person associated with a terrorist offence or another serious criminal offence, the central access point(s) shall process the request immediately and shall only verify ex post whether all the conditions of Article 22n are fulfilled, including whether a case of urgency actually existed. The ex post verification shall take place without undue delay and in any event no later than 7 working days after the processing of the request

3.	Where an ex post verification determines that the access to VIS data was not justified, all the authorities that accessed such data shall erase the information accessed from the VIS and shall inform the central access points of the erasure.

*Article 22n*
*Conditions for access to VIS data by designated authorities of Member States*

1.	***Without prejudice to Article 22 of Regulation 2018/XX [on interoperability] d***~~D~~esignated authorities ***shall have*** ~~may~~ access ***to*** the VIS for consultation if all of the following conditions are met:

(a)	access for consultation is necessary and proportionate for the purpose of the prevention, detection or investigation of a terrorist offences or another serious criminal offence;

(b)	access for consultation is necessary and proportionate in a specific case;

(c)	reasonable grounds exist to consider that the consultation of the VIS data will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation;

(d)	where a query to the CIR was launched in accordance with Article 22 of Regulation 2018/XX [*on interoperability*], the reply received as referred to in paragraph 5 of [Article 22 of Regulation reveals that data is stored in the VIS."

2.	The condition provided in point (d) of paragraph 1 does not need to be fulfilled for situations where the access to the VIS is needed as a tool to consult the visa history or the periods of authorised stay on the territory of the Member States of a known suspect, perpetrator or suspected victim of a terrorist offence or other serious criminal offence***, or the data category with which the search is conducted is not stored in the CIR***.

3.	Consultation of the VIS shall be limited to searching with any of the following data in the ***application*** ~~individual~~ file:

(a)	surname(s) (family name), first name(s) (given names), date of birth, nationality or nationalities and/or sex;

(b)	type and number of travel document or documents, three letter code of the issuing country and date of expiry of the validity of the travel document;

(c) visa sticker number or number of the long-stay visa or residence document and the date of expiry of the validity of the visa, long-stay visa or residence document, as applicable;

(d) fingerprints, including latent fingerprints;

(e) facial image.

4. Consultation of the VIS shall, in the event of a hit, give access to the data listed in this paragraph as well as to any other data taken from the *application* ~~individual~~ file, including data entered in respect of any document issued, refused, annulled, revoked or extended. Access to the data referred to in point (4)(l) of Article 9as recorded in the application file shall only be given if consultation of that data was explicitly requested in a reasoned request and approved by independent verification.

*Article 22o*

*Access to VIS for identification of persons in specific circumstances*

By derogation from Article 22n(1), designated authorities shall not be obliged to fulfil the conditions laid down in that paragraph to access the VIS for the purpose of identification of persons who had gone missing, abducted or identified as victims of trafficking in human beings *or persons who are not able to identify themselves or unidentified human remains, in the event of a natural disaster or an accident* and in respect of whom there are reasonable grounds to consider that consultation of VIS data will support their identification, and/or contribute in investigating specific cases of human trafficking. In such circumstances, the designated authorities may search in the VIS with the fingerprints of those persons.

Where the fingerprints of those persons cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in points (a) and (b) of Article 9 *(4) or points (d) and (e) of Article 22a(1)*.

Consultation of the VIS shall, in the event of a hit, give access to any of the data in Article 9, *Article 22a, Article 22c, Article 22d or Article 22e* as well as to the data in Article 8(3) and (4) *or Article 22a(3)*.

*Article 22p*
*Procedure and conditions for access to VIS data by Europol*

1. Europol shall have access to consult the VIS where all the following conditions are met:

(a) the consultation is necessary and proportionate to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling under Europol's mandate;

(b) the consultation is necessary and proportionate in a specific case;

(c)      reasonable grounds exist to consider that the consultation of the VIS data will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question, in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls under a category covered by this Regulation;

(d)      where a query to the CIR was launched in accordance with Article 22 of Regulation 2018/XX [*on interoperability*], the reply received as referred to in Article 22(3) of that Regulation ~~reveals~~ *indicates* that data is stored in the VIS.

2.      The conditions laid down in Article 22n(2), (3) and (4) shall apply accordingly.

3.      Europol's designated authority may submit a reasoned electronic request for the consultation of all data or a specific set of data stored in the VIS to the Europol central access point referred to in Article 22*l*~~k~~(*23*). Upon receipt of a request for access the Europol central access point shall verify whether the conditions for access referred to in paragraphs 1 and 2 are fulfilled. If all conditions for access are fulfilled, the duly authorised staff of the central access point(s) shall process the requests. The VIS data accessed shall be transmitted to the operating units referred to in Article 22l(1) in such a way as not to compromise the security of the data.

4.      The processing of information obtained by Europol from consultation with VIS data shall be subject to the authorisation of the Member State of origin. That authorisation shall be obtained via the Europol national unit of that Member State.

*Article 22q*
*Logging and documentation*

1.      Each Member State and Europol shall ensure that all data processing operations resulting from requests to access to VIS data in accordance with Chapter III*b*~~c~~ are logged or documented for the purposes of checking the admissibility of the request, monitoring the lawfulness of the data processing and data integrity and security, and self-monitoring.

2.      The log or documentation shall show, in all cases:

(a)      the exact purpose of the request for access to VIS data, including the terrorist offence or other serious criminal offence concerned and, for Europol, the exact purpose of the request for access;

(b)      the national file reference;

(c)      the date and exact time of the request for access by the central access point to the VIS Central System;

(d)      the name of the authority which requested access for consultation;

(e)    where applicable, the decision taken with regard to the ex-post verification;

(f)    the data used for consultation;

(g)    in accordance with national rules or with Regulation (EU) 2016/794, the unique user identity of the ~~official~~ *duly authorised staff* who carried out the search and of the official who ordered the search.

3.    Logs and documentation shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs which do not contain personal data may be used for the monitoring and evaluation referred to in Article 50 of this Regulation. The supervisory authority ~~established~~ *designeted* in accordance with Article 41(1) of Directive (EU) 2016/680, which is responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security, shall have access to these logs at its request for the purpose of fulfilling its duties.

*Article 22r*

*Conditions for access to VIS data by designated authorities of a Member State in respect of*

*which this Regulation has not yet been put into effect*

1.    Access to the VIS for consultation by designated authorities of a Member State in respect of which this Regulation has not yet been put into effect shall take place where the following conditions are met:

(a)    the acce**s**s is within the scope of their powers;

(b)    the acce**s**s is subject to the same conditions as referred to in Article 22n(1);

(c)    the acce**s**s is preceded by a duly reasoned written or electronic request to a designated authority of a Member State to which this Regulation applies; that authority shall then request the national central access point(s) to consult the VIS.

2.    A Member State in respect of which this Regulation has not yet been put into effect shall make its visa information available to Member States to which this Regulation applies, on the basis of a duly reasoned written or electronic request, subject to compliance with the conditions laid down in Article 22n(1).

_____

*    Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).".

*Article 2*
*Amendments to Decision 2004/512/EC*

Article 1(2) of Decision 2004/512/EC is replaced by the following:

"2. The Visa Information System shall be based on a centralised architecture and consist of:

(a) the common identity repository as referred to in [Article 17(2)(a) of Regulation 2018/XX on interoperability],

(b) a central information system, hereinafter referred to as 'the Central Visa Information System' (VIS),

(c) an interface in each Member State, hereinafter referred to as 'the National Interface' (NI-VIS) which shall provide the connection to the relevant central national authority of the respective Member State, or a National Uniform Interface (NUI) in each Member State based on common technical specifications and identical for all Member States enabling the Central System to connect to the national infrastructures in Member States,

(d) a communication infrastructure between the VIS and the National Interfaces;

(e) a Secure Communication Channel between the VIS and the EES Central System;

(f) a secure communication infrastructure between the VIS Central System and the central infrastructures of the European search portal established by [Article 6 of Regulation 2017/XX on interoperability], shared biometric matching service established by [Article 12 of Regulation 2017/XX on interoperability], the common identity repository established by [Article 17 of Regulation 2017/XX on interoperability] and the multiple-identity detector (MID) established by [Article 25 of Regulation 2017/XX on interoperability];

(g) a mechanism of consultation on applications and exchange of information between central visa authorities ('VISMail');

(h) a carrier gateway;

(i) a secure web service enabling communication between the VIS, on the one hand and ~~the~~ the carrier gateway, and the international systems (Interpol systems/databases), on the other hand;

(j) a repository of data for the purposes of reporting and statistics.

The Central System, the National Uniform Interfaces, the web service, the carrier gateway and the Communication Infrastructure of the VIS shall share and re-use as much as technically possible the hardware and software components of respectively the EES Central System, the EES National Uniform Interfaces, the ETIAS carrier gateway, the EES web service and the EES Communication Infrastructure).".

*Article 3*
*Amendments to Regulation (EU) No 810/2009*

Regulation (EU) No 810/2009 is amended as follows:

(1)      ~~in~~ Article 10 *is amended as follows*~~(3), point (c) is replaced by the following~~:

   *(a) point (c) of paragraph (3) is replaced by the following:*

"(c) present a photograph in accordance with the standards set out in Regulation (EC) No 1683/95 ~~or, upon a first application and subsequently at least every 59 months following that, in accordance with the standards set out in Article 13 of this Regulation~~."

   *(b) in paragraph (3) the following point is inserted between (c) and (d):*

*"(ca) allow his facial image, as defined in point 15 of Article 4 of the VIS Regulation, taken live in accordance with Article 13;"*

(2)      Article 13 is amended as follows:

   *(-a) paragraph 1 is replaced by the following:*

*"1.  Member States shall collect biometric identifiers of the applicant comprising a facial image of him and his 10 fingerprints in accordance with the safeguards laid down in the Council of Europe's 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."*

   (a) ~~in~~ paragraph 2~~, the first indent~~ is replaced by the following:

*"2. At the time of submission of the first application and subsequently at least every 59 months thereafter, the applicant shall be required to appear in person. At that time, the following biometric identifiers of the applicant shall be collected:*

   *- a facial image taken live as defined in point 15 of Article 4 of the VIS Regulation;*

   *- his 10 fingerprints taken flat and collected digitally.*

   (b) ~~in~~ paragraph 3~~, the first subparagraph~~ is replaced by the following:

*"3. Where fingerprints and a live facial image of sufficient quality were collected from the applicant and entered in the VIS as part of an application lodged less than 59 months before the date of the new application, these data may be copied to the subsequent application; otherwise these data must be collected anew. Before copying a facial image, the changes of the applicants' appearance, in particular in cases of young children shall be taken into consideration whenever possible.*

*However, where there is reasonable doubt regarding the identity of the applicant, the consulate shall collect fingerprints within the period specified in the first subparagraph.*

*Furthermore, if at the time when the application is lodged, it cannot be immediately confirmed that the fingerprints were collected within the period specified in the first subparagraph, they shall be collected again."*

> *(ba) paragraph 4 is replaced by the following:*

*" The facial image of third country nationals referred to in paragraph 2 shall have sufficient image resolution and quality to be used in automated biometric matching."*

> (c) in paragraph 7, point (a) is replaced by the following:

"(a) children under the age of 6;";

> *(ca) in paragraph 7 the following point is insterted:*

*"(e) persons who are required to appear as witness before international courts and tribunals in the territory of the Member States and their appearance in person to lodge the visa application would put them in serious danger."*

> *(cb) the following paragraphs are inserted:*

*"7a. Applicants referred to in paragraph 7(a), (c), (d) and (e) may also be exempt from having their facial images taken live upon submission of the application. In these cases, a facial image with sufficient image resolution and quality to be used in automated biometric matching shall be presented.*

*"7b. In exceptional cases where the quality and resolution specifications set for the live enrolment of the facial image cannot be met, the facial image may be extracted electronically from the chip of the electronic Machine Readable Travel Document (eMRTD). Before extracting the data from the chip, the authenticity and integrity of the chip data shall be confirmed using the complete valid certificate chain, unless this is technically impossible or impossible due to the unavailability of valid certificates. In such cases, the facial image shall only be inserted into the application file in the VIS pursuant to Article 9 and 22a of the VIS Regulation after electronic verification that the facial image recorded in the chip of the eMRTD corresponds to the live facial image of the third-country national concerned."*

> (d)  paragraph 8 is deleted;

(3)      Article 21 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. In respect of each application the VIS shall be consulted in accordance with Articles 8(2), 15 and *9a* of the Regulation (EC) No 767/2008. Member States shall ensure that full use is made of all search criteria pursuant to these articles, in order to avoid false rejections and identifications.

(b) the following paragraphs 3a, *3aa* and 3b are inserted:

"3a. For the purpose of assessing the entry conditions provided for in paragraph 3, the ***visa authority*** ~~consulate~~ shall take into account the result of the verifications pursuant to Article 9c of the Regulation (EC) No 767/2008 of the following databases:

(a)      SIS and the SLTD to check whether the travel document used for the application corresponds to a travel document reported lost, stolen*, **misappropriated*** or invalidated ~~in the~~ and whether the travel document used for the application corresponds to a travel document recorded in a file in the Interpol TDAWN;

(b)      the ETIAS Central System to check whether the applicant correspond to a refused, revoked or annulled application for travel authorisation ***or to data from the watchlist referred to in Article 34 of Regulation (EU) 2018/1240 for the purposes of establishing a European Travel Information and Authorisation System***;

(c)      the VIS to check whether the data provided in the application concerning the travel document correspond to another application for a visa associated with different identity data, as well as whether the applicant has been subject to a decision to refuse, revoke or annul a ~~short stay~~ visa;

(d)      the EES to check whether the applicant is currently reported as overstayer, whether he has been reported as overstayer in the past or whether the applicant was refused entry in the past;

(e)      the Eurodac to check whether the applicant was subject to a withdrawal or rejection of the application for international protection *[or registered in Eurodac due to illegal entry and stay]*;

(f)      the Europol data to check whether the data provided in the application corresponds to data recorded in this database;

(g)      *[*the ECRIS-TCN system ~~to check whether the applicant corresponds to a person whose data is recorded in this database for terrorist offences or other serious criminal offences;*]*

**(h)**      the SIS to check whether the applicant is subject to an alert in respect of persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant or wanted for arrest for extradition purposes~~.~~*;*

*(i)*      ***the SIS to check whether the applicant is subject to an alert for the purpose of refusing entry in accordance with Article 24 of Regulation (EU) … of the European Parliament and of the Council [SIS Borders];***

(*j*)     *the SIS to check if the applicant is subject to an alert on persons subject to a return decision.*

The **visa authority** ~~consulate~~ shall have access to the application file and the linked application file(s), if any, as well as to all the results of the verifications pursuant to Article 9c of Regulation (EC) No 767/2008.

*3aa. By derogation from paragraph 3a, due to the exceptional circumstances, where the period of validity and/or the duration of stay of an issued visa may be extended pursuant to Article 33 or where a visa may be issued at the external border pursuant to Article 35 or Article 36 but where the necessary verifications pursuant to Article 9a(4a) of Regulation (EC) No 767/2008 could not be concluded in reasonable time, the visa authority has to presume that the visa shall not be extended or issued.*

3b. The visa authority shall consult the multiple-identity detector together with the common identity repository referred to in Article 4(37) of Regulation 2018/XX [*on interoperability*] or the SIS or both to assess the differences in the linked identities and shall carry out any additional verification necessary to take a decision on the status and colour of the link as well as to take a decision on the issuance or refusal of the visa of the person concerned.

In accordance with Article 59(1) of Regulation 2018/XX [*on interoperability*], this paragraph shall apply only as from the start of operations of the multiple-identity detector.";

        (c) paragraph 4 is replaced by the following:

"4. The **visa authority** ~~consulate~~ shall verify, using the information obtained from the EES, whether the applicant will not exceed with the intended stay the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a national long-stay visa or a residence permit issued by another Member State.";

(4)     the following Article 21a is inserted:

*"Article 21a*

Specific risk indicators

1.     Assessment of security or illegal immigration or a high epidemic risks shall be *supported by* ~~based on~~:

        (a)     statistics generated by the EES indicating abnormal rates of overstayers and refusals of entry for a specific group of travellers holding a visa;

        (b)     statistics generated by the VIS in accordance with Article 45a *of the VIS Regulation* indicating abnormal rates of refusals of visa applications due to an irregular migration, security or public health risk associated with a specific group of travellers;

(c)     statistics generated by the VIS in accordance with Article 45a *of the VIS Regulation* and the EES indicating correlations between information collected through the application form and overstay or refusals of entry;

(d)     information substantiated by factual and evidence-based elements provided by Member States concerning specific security risk indicators or threats identified by that Member State;

(e)     information substantiated by factual and evidence-based elements provided by Member States concerning abnormal rates of overstayers and refusals of entry for a specific group of travellers for that Member State;

(f)     information concerning specific high epidemic risks provided by Member States as well as epidemiological surveillance information and risk assessments provided by the European Centre for Disease Prevention and Control (ECDC) and disease outbreaks reported by the World Health Organisation (WHO).

2.     The Commission shall adopt an implementing act specifying the risks referred to in paragraph 1. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 52(2).

3.     Based on the specific risks determined in accordance with paragraph 2 specific risk indicators shall be established, consisting of a combination of data including one or several of the following:

(a)     age range, sex, nationality;

(b)     country and city of residence;

(c)     Member State(s) of destination;

(d)     Member State of first entry;

(e)     purpose of travel;

(f)     current occupation.

4.     The specific risk indicators shall be targeted and proportionate. They shall in no circumstances be based solely on a person's sex or age. They shall in no circumstances be based on information revealing a person's race, colour, ethnic or social origin, genetic features, language, political or any other opinions, religion or philosofical belief, trade union membership, membership of a national minority, property, birth, disability or sexual orientation.

5.     The specific risk indicators shall be adopted by the Commission by implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 52(2).

6.     The specific risk indicators shall be used by the visa authorities when assessing whether the applicant presents a risk of illegal immigration, a risk to the security of the Member States, or a high epidemic risk in accordance to Article 21(1).

7.     The specific risks and the specific risk indicators shall be regularly reviewed by the Commission.";

(5)     Article 46 is replaced by the following:

*" Article 46*
*Compilation of statistics*

The Commission shall, by 1 March each year,  publish the compilation of the following annual statistics on visas per consulate and border crossing point where individual Member States process visa applications:

(a)     number of airport transit visas applied for, issued and refused;

(b)     number of uniform single entry, and multiple entry visa applied for, issued (disaggregated by length of validity: *6 months or below,* 1, 2, 3, 4 and 5 years) and refused;

(c)     number of visas with limited territorial validity issued.

These statistics shall be compiled on the basis of the reports generated by the central repository of data of the VIS in accordance with Article *45a*~~17~~ of Regulation (EC) No 767/2008.";

(6)     ~~In~~ Article 57 *is amended as follows:*~~, paragraphs 3 and 4 are deleted.~~

     *(a) paragraph 1 is replaced by the following:*

*"1.  Two years after all the provisions of this Regulation have become applicable, the Commission shall produce an evaluation of its application. This overall evaluation shall include an examination of the results achieved against objectives and of the implementation of the provisions of this Regulation.";*

     *(b) paragraphs 3 and 4 are deleted.*

*Article 4*
*Amendments to Regulation (EU) No 2017/2226*

Regulation (EU) No 2017/2226 is amended as follows:

*(-1)   in Article 8(1), point (e) is replaced by the following:*

*"(e) where the identity of a visa holder is verified using fingerprints or facial image, verify at the borders at which the EES is operated the identity of a visa holder by comparing the fingerprints or facial image of the visa holder with the fingerprints or facial image taken live and recorded in the VIS in accordance with Article 23 of this Regulation and Article 18(6) of Regulation (EC) No 767/2008. Only facial images recorded in the VIS with an indication that the facial image was taken live upon submission of the application shall be used for comparison against the VIS."*

(1)      in Article 9(2), the following sub-paragraph is added:

"The EES shall provide the functionality for the centralised management of this list. The detailed rules on managing this functionality shall be laid down in implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 68(2) of this Regulation.";

(2)      in Article 13, paragraph 3 is replaced by the following:

"3. In order to fulfil their obligation under point (b) of Article 26(1) of the Convention implementing the Schengen Agreement, carriers shall use the web service to verify whether a short-stay visa is valid, including if the number of authorised entries have already been used or if the holder has reached the maximum duration of the authorised stay or, as the case may be, if the visa is valid for the territory of the port of destination of that travel. Carriers shall provide the data listed under points (a), (b) and (c) of Article 16(1) of this Regulation. On that basis, the web service shall provide carriers with an OK/NOT OK answer. Carriers may store the information sent and the answer received in accordance with the applicable law. Carriers shall establish an authentication scheme to ensure that only authorised staff may access the web service. It shall not be possible to regard the OK/NOT OK answer as a decision to authorise or refuse entry in accordance with Regulation (EU) 2016/399.";

*(2a)   Article 15 is amended as follows:*

    *(a) paragraph 1 is replaced by the following:*

*"1. Where it is necessary to create an individual file or to update the facial image referred to in point (d) of Article 16(1) and point (b) of Article 17(1) and Article 18(2), the facial image shall be taken live."*

    *(b) paragraph 5 is deleted;*

*(2b) in Article 16, point (d) of paragraph 1 is replaced by the following:*

*"(d) the facial image as referred to in Article 15, unless a facial image taken live is recorded in the VIS."*

*(2c) in Article 18, point (a) of paragraph 2 is replaced by the following:*

*"(a) for third-country nationals subject to a visa requirement, the facial image referred to in Article 15 of this Regulation;"*

*(2d) in Article 23, subparagraph 3 of paragraph 2 is replaced by the following:*

*"If the search in the EES with the data set out in the first subparagraph of this paragraph indicates that data on the third- country national are recorded in the EES, the border authorities shall compare the live facial image of the third-country national with the facial image referred to in point (d) of Article 16(1) and point (b) of Article 17(1) of this Regulation or the border authorities shall, in the case of visa-exempt third-country nationals, proceed to a verification of fingerprints against the EES and, in the case of third-country nationals subject to a visa requirement, proceed to a verification of fingerprints or facial image taken live directly against the VIS in accordance with Article 18 of Regulation (EC) No 767/2008. For the verification of fingerprints or facial image taken live against the VIS for visa holders, the border authorities may launch the search in the VIS directly from the EES as provided in Article 18(6) of that Regulation."*

*(2e) in Article 27, subparagraph 2 of paragraph 1 is replaced by the following:*

*"Where the search with the fingerprint data or with the fingerprint data combined with the facial image indicates that data on that third-country national are not recorded in the EES, access to data for identification shall be carried out in the VIS in accordance with Article 20 of Regulation (EC) No 767/2008. At borders at which the EES is operated, the competent authorities shall access the VIS in accordance with Articles 18 or 19a of Regulation (EC) No 767/2008. Searches in EES and VIS may be launched in parallel."*

(3)      in Article 35(4), the expression "through the infrastructure of the VIS" is deleted.

*Article 5*
*Amendments to Regulation (EU) 2016/399*

Regulation (EU) 2016/399 is amended as follows:

(1)      in Article 8(3),  the following point (ba) is added:

"(ba) if the third-country national holds a long stay visa or a residence permit, the thorough checks on entry shall ~~also~~ comprise verification of the identity of the holder of the long-stay visa or residence permit and the authenticity *and validity* of the long-stay visa or residence permit by consulting the Visa Information System (VIS) in accordance with Article 22g of Regulation (EC) No 767/2008;

*I*in circumstances where verification of the document holder or of the document in accordance with Articles 22g of that Regulation, as applicable, fails or where there are doubts as to the identity of the holder, the authenticity of the document and/or the travel document, the duly authorised staff of those competent authorities shall proceed to a verification of the document chip.";

(2)     in Article 8(3), points (c) to (f) are deleted*;*

*(3)     in Article 8(3), the words "Article 20" are replaced by the words "Article 6a".*

*Article 7*
*Amendments to Regulation (EU) XXX on establishing a framework for interoperability between EU information systems (borders and visa) [interoperability Regulation]*

Regulation (EU) XXX *on establishing a framework for interoperability between EU information systems (borders and visa) [interoperability Regulation]* is amended as follows:

(1)     in Article 13(1), point (b) is replaced by the following:

"(b) the data referred to in Article *9(5),* 9(6), Article 22*a*e(*12*)(*j*f) and (*k*g) ~~and Article 22d(f) and (g)~~ of Regulation (EC) No 767/2008;"

(2)     In Article 18(1), point (b) is replaced by the following:

"(b)   the data referred to in Article 9(4)(a) *to*~~, (b) and~~ (c*c*), Article 9 (5) and (6), Article 22*a*e(12)(*d*a) to (*g*ee), (*j*f) and (*k*g)~~, Article 22d(a), (b), (c), (f) and (g)~~ of Regulation (EC) No 767/2008;"

(3)     in Article 26(1), point (b) is replaced by the following:

"(b) competent authorities referred to in Article 6(1) ~~and (2)~~ of Regulation (EC) No 767/2008 when creating or updating an application file ~~or an individual file~~ in the VIS in accordance with ~~Article 8 or Article 22a of~~ Regulation (EC) No 767/2008;";

(4)     Article 27 is amended as follows:

       (a) in paragraph 1, point (b)  is replaced by the following:

"(b)   an application file ~~or an individual file~~ is created or updated in the VIS in accordance with ~~Article 8, or Article 22a of~~ Regulation (EC) No 767/2008;";

       (b) in paragraph 3, point (b)  is replaced by the following:

"(b) surname (family name); first name(s) (given name(s)); date of birth, sex and nationality(ies) as referred to in Article 9(4)(a), in Article 22*a*e(*12*)(*d*a) ~~and in Article 22d(a)~~ of Regulation (EC) No 767/2008;";

(4)     in Article 29(1), point (b) is replaced by the following:

"(b) the competent authorities referred to in Article 6(1) ~~and (2)~~ of Regulation (EC) No 767/2008 for hits that occurred when creating or updating an application file ~~or an individual file~~ in the VIS in accordance with ~~Article 8 or Article 22a of~~ Regulation (EC) No 767/2008;".

*Article 8*
*Repeal of Decision 2008/633/JHA*

Decision 2008/633/JHA is repealed. References to Decision 2008/633 shall be construed as references to Regulation (EC) No 767/2008 and shall be read in accordance with the correlation table in Annex 2.

*Article 9*
*Entry into force **and application***

*1.* This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

**2. The Commission shall adopt a decision setting the date on which VIS starts operations pursuant to this Regulation, after the verification that the following conditions are met:**

**(a) the Management Authority has notified the Commission of the successful completion of all testing activities with regard to CS-VIS; and**

**(b) Member States have notified the Commission that they have made the necessary technical and legal arrangements to process data pursuant to this Regulation.**

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*                 *For the Council*

*The President*                                          *The President*

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