

March 2018

Revision of the Visa Code (Regulation 810/2009) and Visa Information System (Regulation 767/2008)

This briefing is one in a series of 'Implementation appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's annual work programme. 'Implementation appraisals' aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness to date of specific EU law, drawing on input from EU institutions and bodies, as well as external organisations. 'Implementation appraisals' are provided by the EPRS Ex-Post Evaluation Unit, to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.

Summary

The EU common visa code (the Visa Code) was adopted in 2009 by means of Regulation 810/2009. It establishes the procedures and conditions for issuing short-stay visas for entry into and transit through the Schengen area. This type of visa is valid for up to three months, whereas long-term visas (or residence permits) remain subject to national procedures.

Regulation 767/2008 on the Visa Information System (VIS) defines the purpose and functionalities of the VIS, the computerised system aimed at facilitating the exchange of data between EU Member States and associated countries applying the common visa policy.

Since its adoption, EU policy as regards short-term visas has faced a significant challenge: the delicate equilibrium between the need to promote economic growth via mobility and tourism, on the one hand, and the need to ensure the security of the Schengen area, on the other. Assessments of the implementation of the Visa Code and the VIS have shown that the requirements for obtaining a Schengen visa have had a negative impact on tourism and as a result, on EU economic growth. That said, the extent to which the provisions of the Visa Code have contributed to preserving the security of the external borders is difficult to evaluate, since the full deployment of the VIS (both at consular posts worldwide and at Schengen border crossing points) was completed relatively recently (2016). In its work programme for 2018, the European Commission announced that proposals will be tabled to revise the Visa Code and upgrade the VIS.

The revision of the Visa Code, in particular, will aim at overcoming divisions triggered by the visa package submitted by the Commission in 2014. Thus far, the co-legislators have not reached an agreement on this set of measures. On the other hand, efforts to upgrade the VIS will be aimed at enhancing visa processing further, among other things through improving law enforcement authorities' access to the VIS, including new categories of data in the system, and ensuring the interoperability of the VIS with the other existing large-scale IT systems in the area of freedom, security and justice.

1. Background

The gradual establishment of an EU common visa policy can be traced back to the creation of the Schengen area. The Schengen provisions, formally adopted in the Schengen Convention in 1990, abolished checks at the Union's internal borders, thus implementing the principle of free movement of persons while also tightening controls at the external borders. Today, the [Schengen acquis](#), consolidated in the Treaty of Amsterdam in 1997, is applied in full in most EU Member States, except for Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom.¹ From among non-EU Member States, European Economic Area (EEA) members (Iceland, Liechtenstein and Norway) and Switzerland have joined the Schengen area.

The **Schengen acquis** includes a harmonisation of the conditions of entry and the rules on short-stay visas. At present, anyone who is not an EU, EEA or Swiss citizen, or who is not a national of a visa-exempt country and who wishes to enter the Schengen area, Bulgaria, Croatia, Cyprus or Romania, must apply for a visa valid for up to three months. In 2001, [Council Regulation 539/2001](#) established a common 'EU visa black and white list' of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. In 2008, [Regulation 767/2008](#) (the VIS Regulation) introduced the **Visa Information System (VIS)**, establishing a database of the applicants for a Schengen visa, intended for use by national consulates in particular. In line with the [Hague Programme](#), in 2009, the Commission submitted a new proposal to incorporate – by means of recasting² – all legal instruments governing the conditions and procedures for issuing visas, into one code on visas.³ Consequently, [Regulation 810/2009](#) establishing a **Common Code on Visas** (the Visa Code) was adopted in 2009 along with a [Handbook](#) for the organisation of visa sections and local Schengen cooperation, thereby strengthening the uniformity of visa policy further.⁴ The code entered into force in October 2009 and became applicable on 5 April 2010.

In addition to the Visa Code and the VIS Regulation, EU common visa policy includes the principle of **visa reciprocity**, according to which EU citizens do not need a visa in non-EU countries whose nationals are exempt from the EU visa requirement. The common visa policy also opens the possibility to conclude **visa facilitation agreements (VFAs)** with some non-EU countries, whereby both the EU and non-EU citizens benefit from facilitated procedures for issuing visas. VFAs are linked to [readmission agreements](#), which establish the procedures for the return to the EU or to the partner non-EU country of persons (own and third-country nationals or stateless persons) in an irregular situation.

2. Overview of the current legislation

Regulation 810/2009 on the Visa Code establishes the procedures and conditions for issuing visas for short stays in and transit through the territories of EU countries. The code applies to nationals of non-EU countries who must be in possession of a visa when crossing the external border of the EU, as listed in the above-mentioned Regulation 539/2001. A short-stay visa issued by one of the Schengen countries entitles its holder to travel throughout the Schengen area for **up to 90 days (three months) in any 180-day (six-month) period**. Visas for visits exceeding that period remain subject to national procedures. The code covers the grounds on which a visa can be refused and allows for the possibility of issuing multiple-entry visas (MEVs, valid between six months and five years) if the applicant proves the need to travel frequently to the Schengen area. It also allows EU Member States to cooperate with external service providers for the collection of applications, while establishing a 'one stop' principle for the lodging of applications. The Visa Code moreover provides that, after verifying the admissibility of the application, the competent authority must create **an application file in the VIS**, following the procedures set out in [Regulation 767/2008](#) (the VIS Regulation).

¹ Bulgaria and Romania are in the process of joining the Schengen area.

² 'Recasting' brings together in a single new act a legislative act and all the amendments made to it. The new act passes through the full legislative process and repeals all the acts being recast. Recasting involves new substantive changes, as amendments are made to the original act during preparation of the recast text. However, the co-legislators have the possibility to amend only the parts highlighted in grey by the Commission.

³ See: European Parliament OEIL, [summary](#) of the Visa Code Regulation. Denmark has opted out of the proposal. The UK and Ireland are not covered by the regulation, as they are not part of the Schengen area.

⁴ See: S. Peers, 'The rise and fall of EU Justice and home affairs laws', in Maria Fletcher et al. (ed.), *The European Union as an Area of Freedom, Security and Justice*, Routledge, Taylor and Francis Group, 2016, p. 19.

The VIS Regulation defines the purpose and functionalities of the VIS, the computerised system aimed at facilitating the **exchange of data** between EU Member States and associated countries applying the common visa policy. These data include photographs, fingerprint data, links to previous visa applications and to the application files of persons travelling together. This collection of data aims at fighting fraud, including 'visa shopping' – the practice of making visa applications to other EU Member States once a first application has been rejected. Designated authorities of Member States and Europol also have access for consultation to the VIS for the purposes of prevention, detection and investigation of terrorist offences and of other serious criminal offences. As part of the issuing of short-stay visas, the competent authority must check that the applicant fulfils the entry conditions as set out in the [Schengen Borders Code](#), does not pose a risk of illegal immigration or a threat to the security of the country⁵ and intends to leave before the visa expires. The Visa Code and the VIS thus work in tandem in the assessment of applications for short-stay visas. Since 2012, the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (**eu-LISA**) has been responsible for the operational management of the VIS.⁶ On 29 June 2017, the European Commission adopted a proposal to strengthen the mandate of eu-LISA.⁷

In parallel and as part of the [Smart Borders package](#), the recent adoption of the **Entry/Exit System (EES) will apply to all non-EU nationals who are admitted for a short stay into the Schengen area**. This system aims at reinforcing controls as well as detecting document and identity fraud. The system will be interconnected with the VIS database and is expected to become operational in 2020.⁸ These recent changes in the way the EU manages its external borders have also affected the provisions related to **visa-free travel to the EU**, as illustrated by both the adoption of a [revised visa suspension mechanism](#) allowing the EU to temporarily suspend visa-free travel for countries that might pose a substantial migratory or security risk, and the submission of a proposal for a **European Travel Information and Authorisation System (ETIAS)**.⁹

3. European Commission evaluation reports

The rationale for creating a common visa policy was, on one hand, to promote and facilitate mobility and tourism (seen as key drivers for economic growth) and, on the other hand, to ensure the internal security of the Schengen area. The reports published by the European Commission since the adoption of the Visa Code reflect the challenges encountered in accommodating these two imperatives. Two reports, published in 2012, assessed the implementation and the development of the common visa policy as a means to spur growth and ensure the smooth functioning of local Schengen cooperation.

The [first report](#), focused on the implementation and the development of the common visa policy to spur growth, underlines that there has been progress in the standardisation of EU short-term visa procedures. However, it also stresses that potential tourists are often deterred from traveling to the Schengen area due to cumbersome visa requirements.¹⁰ It highlights good practices in this regard, such as boosting capacities of diplomatic missions and consular posts in priority locations to respond rapidly and efficiently to visa demands, or introducing a 'fast track procedure' for particular international events that attract many visitors, such as football championships. While the European Commission recalls that the most effective visa facilitation remains the waiving of the visa requirement, it also insists on the **need to strike the right balance between economic opportunities and responses to security concerns**.

⁵ In particular, a person can be refused a visa when an alert has been issued in the Schengen Information System (SIS) or in Member States national databases. See EPRS briefing: C. Dumbrava, [Revision of the Schengen Information System for border checks](#), February 2018.

⁶ eu-Lisa also manages the Schengen Information System (SIS II) and EURODAC: See [eu-Lisa mandate](#).

⁷ See EPRS briefing on the state of play: C. Dumbrava, [European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice \(eu-LISA\)](#), January 2018.

⁸ See EPRS briefing: A. Orav, A.D'Alfonso, [Smart borders: EU Entry/Exit System](#), January 2018; See EPRS initial appraisal of the Commission's impact assessment of the proposal: H. Dalli, [The Establishment of an EU Entry/Exit System](#), May 2016.

⁹ See European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, study: S. Alegre, J. Jeandesboz and N. Vavoula, [European Travel Information and Authorisation System \(ETIAS\): Border management, fundamental rights and data protection](#), April 2017; and EPRS briefing: A. Radjenovic, [European Travel Information and Authorisation System \(ETIAS\)](#), March 2017.

¹⁰ The report reviews in particular tourists from emerging markets (Brazil, Russia, India, China).

The [second report](#), focused on local Schengen cooperation (LSC), reviews how the LSC provisions work in practice and what challenges have been encountered. The report notes that some provisions introduced by the Visa Code are not yet in place across the board. These include the harmonisation of the lists of supporting documents to be submitted by visa applicants; the common criteria for the implementation of optional visa-fee waivers for certain categories of applicants; and the consistency of information provided to visa applicants and exchange of relevant information among the Member States' consulates in a given location. In addition, at the time of writing, not all Member States had consular posts in some locations. In others, there were no Member States' consulates at all. The report concludes that if there is undoubtedly an 'LSC's added value', the legal framework for structured LSC 'has not yet delivered its **full potential**'.

In 2013, a [study](#) commissioned by the Commission's DG Enterprise and Industry (now DG Growth) assessed once again the economic impact of short-stay visa facilitation on the tourism industry, and confirmed the existing trend: while the current visa regime contributes to more harmonised visa procedures, it also has negative effects on tourism. According to the study estimates, in 2012, a total of 6.6 million potential travellers from six target markets (China, India, Russia, Saudi Arabia, South Africa and Ukraine) were 'lost' due to the Schengen area visa regime, leading to a loss of a potential €5.5 billion in direct contributions to GDP every year, adding up to approximately 113 000 jobs in the tourism industry and related sectors. The findings of this study were referenced in a 2014 [Commission report](#) that assessed the overall implementation of the Visa Code. This report notes a lack of procedural facilitations in practice for applicants who have a **positive visa record** (including MEVs). As regards the **use of external service providers** for the processing of applications, it stresses that while the rationale of the related Visa Code provisions is to help Member States to deal with a higher number of visa applications and enhance their consular coverage in third countries, in practice, Member States have used these providers disproportionately, without assessing other possibilities. As a result, direct access to consulates is not always provided to the applicants. Furthermore, **access to a consulate** can also be challenging, costly and time-consuming in third countries: where all or most Member States are only present in the capital, many applicants need to travel long distances to reach them. Overall, the 2014 report acknowledges that 'applicants – and to a certain extent consulates, too – find the existing visa procedure lengthy, cumbersome and costly'. It concludes that, while 'the provisions of the Visa Code that aimed to preserve the security of external borders have proved to be consistent and effective', 'the provisions intended to offer procedural facilitations to specific categories of persons, and which could also ease the administrative burden for Member States' consulates, have not had the expected impact'. As a whole, the result is deemed **unsatisfactory**, in terms of missed economic benefits. Subsequently, this assessment was followed by two proposals (**the visa package**): a [proposal](#) to recast and amend the Visa Code and a [proposal](#) for a regulation establishing a new type of visa, the touring visa. The latter initiative aimed at addressing the particular challenges raised by live performing artists who tour in the Schengen area for a prolonged period of time (see point 7).

Where the VIS is concerned, an [evaluation](#) was carried out in 2016 as part of the Commission's REFIT programme. The VIS started operations in 2011 and followed a phased rollout in the Member States' consular posts worldwide. The rollout was completed on 20 November 2015 at the Member States' consular posts and on 29 February 2016 at the Schengen border crossing points. In its [report](#) following the evaluation, the Commission recalls that there had been difficulties in evaluating the system before the rollout was fully completed. It notes the positive effects of the deployment of the VIS across the Member States' consulates: in general, the introduction of the VIS has **facilitated the visa application procedure**. In particular, the visa history of the applicants is now easily available to visa authorities throughout the Schengen area and is centralised in a single database which can be accessed easily. The VIS has a capacity of up to 450 000 operations per hour and can store and process 60 million pieces of visa application data. Furthermore, many of the Member States that responded to the evaluation considered the introduction of the VIS as having supported the application of the Dublin Regulation by helping to determine which Member State was responsible for examining an asylum application where a visa had already been issued to the asylum applicant by a Member State. In terms of security, the Commission report argues that the VIS has facilitated the fight against visa fraud. Member States have a more nuanced view when it comes to the positive impact the VIS has had on **preventing threats** to the internal security and on preventing applicants from bypassing the

criteria for determining the Member State responsible for examining their visa application. According to the Commission, these reservations are mainly due to under-exploited functionalities of the VIS; the rather recent deployment of the system; and its lack of interconnectivity with other existing EU systems (such as the SIS and Eurodac). On the latter aspect, a high-level expert group on information systems and **interoperability** was tasked in 2016 with addressing the legal, technical and operational aspects of the different options for achieving interoperability of these databases. Its [final report](#) was published in May 2017.

4. Court of Justice of the European Union

Since the adoption of the Visa Code, the Court of Justice of the European Union (CJEU) has clarified certain aspects of this EU instrument. In 2013, it held that the authorities of a Member State cannot refuse to issue a short-term visa to an applicant, unless one of the **grounds for refusal** listed in the Visa Code applies.¹¹ In 2014, the Court held that cancellation of a passport does not mean that a uniform visa affixed to that passport is invalidated.¹² In 2016, a much-discussed ruling concerned a **case involving the 'humanitarian visa'**. This case and the resulting CJEU interpretation are related to Article 25 of the Visa Code that allows issuing a visa with limited territorial validity on humanitarian grounds. The case involved a Christian Orthodox Syrian couple and their three children living in Aleppo (Syria), who had submitted applications for visas on the basis of the Visa Code. The purpose of the applications was to obtain visas with limited territorial validity, in order to enable them to leave Aleppo with a view to applying for asylum in Belgium. The applications were rejected by the Belgian authorities, which took the view that the family clearly intended to stay in Belgium for more than 90 days. On this matter, the CJEU held that Member States are not required, under EU law, to grant a short-stay visa to persons who wish to enter their territory with a view to applying for asylum.¹³ The Court stated that no measure had been adopted, to date, by the EU with regard to the issuing of long-term visas to third-country nationals on humanitarian grounds. Accordingly, the Court argued that the applications of the Syrian family fell solely within the scope of national law.¹⁴

5. Advisory bodies

The contributions of the European Economic and Social Committee (EESC) and the European Committee of the Regions (CoR) on the issue of visas are more closely related to the facilitation of mobility. In 2013, reacting to the smart borders package, the **CoR** raised serious concerns over the implications of the proposals for **fundamental rights**, in particular the free movement of persons and the protection of personal data of third-country nationals.¹⁵ In 2017, the CoR called for a comprehensive strategy **supporting the tourism sector** in an [open letter](#) addressed to Commission President, Jean-Claude Juncker. In 2014, the **EESC** published an [opinion](#) strongly supporting the **visa package** (see point 7).

6. Supervisory authorities and EU agencies

As regards data protection, the **European Data Protection Supervisor** (EDPS) has expressed its opinion on several occasions in relation to the deployment and functioning of the VIS. In 2005, in view of the major potential impact the VIS proposal would have on privacy and other fundamental rights of individuals, the EDPS carried out checks of the VIS against certain data protection principles. The EDPS insisted on the need for purpose limitation and proportionality, as well as on the need to have proper safeguards for the use of biometric data.¹⁶ Pursuant to Article 42 of the VIS Regulation, the EDPS checks that the personal data-processing activities performed by eu-LISA are carried out in compliance with the applicable law. In September 2015, the EDPS carried out an audit of the VIS, during which no critical findings were reported

¹¹ CJEU, [Case C-84/12](#), *Rahmanian Koushkaki v. Bundesrepublik Deutschland*, 19 December 2013.

¹² CJEU [Press release](#) on Case C-575/12, *Air Baltic Corporation AS v. Valsts robežsardze*, 4 September 2014.

¹³ CJEU, [Case C-638/16](#), *XandX v. État Belge*, 7 March 2017.

¹⁴ See CJEU [Press release](#) No 24/17 of 7 March 2017.

¹⁵ CoR: [Managing the EU's borders: CoR questions necessity and cost-effectiveness of proposed systems](#), November 2013.

¹⁶ EDPS, [Opinion](#) of the European Data Protection Supervisor on the Proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas (COM(2004) 835 final), 2005/C 181/06.

regarding the security of the central VIS and no security incidents were reported regarding any unauthorised access to VIS data.¹⁷ In 2016, the EDPS furthermore issued an [opinion](#) on the Entry/Exit System (see point 2), which raised interoperability issues concerning the VIS. Interoperability matters have also been discussed in detail in a 2017 EDPS [reflection paper](#). In the context of the current consultations related to the revision of the VIS, the EDPS has shared its concerns regarding the compatibility of certain provisions envisaged – such as reducing the age limit for collecting and processing fingerprint data of children (see point 7) – with the EU Charter of Fundamental Rights.¹⁸

In 2015, the **EU Fundamental Rights Agency (FRA)** recalled the principle established by the CJEU on the need to apply the Visa Code as regards the grounds for refusal (see point 4).¹⁹ Concerning the issue of the humanitarian visa and prior to the above-mentioned CJEU ruling, in 2015 the FRA published a [toolbox](#) on the legal entry channels to the EU for persons in need of international protection. More recently, the FRA has adopted a [report](#) aimed at supporting the work of the high-level expert group on information systems and interoperability by highlighting ways to address fundamental rights challenges. The FRA director stressed in January 2018 that the FRA was concerned by the inaccuracy of some data available in the VIS and the SIS.²⁰

In 2016, **eu-LISA** published its [first report](#) that covers the period from 1 September 2013 to 30 September 2015 and was used in the framework of the above-mentioned evaluation of the VIS as part of the Commission's REFIT programme (see point 3).

7. European Commission proposals

This section gives an overview of the Commission's successive proposals related to the Visa Code and the VIS: the 2014 visa package (withdrawn in late 2017); the upcoming proposals for revision of the Visa Code; and the upgrading of the VIS.

Main elements of the 2014 visa package (*withdrawn in late 2017*)

- speeding up of the visa process;
- possibility for an applicant to apply at any of the other consulates of a Schengen country if the Schengen country responsible for processing the visa application is neither present nor represented in a particular non-EU country;
- introduction of mandatory criteria for obtaining a multiple-entry visa valid for three/five years;
- establishment of a touring visa that allows non-EU nationals entering the Schengen area to travel within its zone for up to one year.

In April 2014, the European Commission submitted the visa package to the co-legislators. The package proposed important changes to the EU visa rules²¹ (thus amending the Visa Code) and included a new proposal for a regulation establishing a new type of visa: the touring visa. In late 2017, the Commission announced the **withdrawal²² of this package** in its [work programme](#) for 2018. This withdrawal is mainly due to blockages in the interinstitutional negotiations for the proposals (see point 8.1.). The Commission announced that **two new proposals would be tabled instead**: one to revise the Visa Code (in March 2018) and the other to upgrade the VIS (in May 2018). Regarding the touring visa that was part of the visa package, in a [written answer](#) to the Parliament, the Commission clarified in February 2017 that it does not intend to table a revised proposal and that it will continue to engage with the co-legislators to re-launch discussions on this initiative.

¹⁷ See: eu-LISA, [Report on the VIS](#), July 2016.

¹⁸ See: [EDPS response](#) to the Commission public consultation on lowering the fingerprinting age for children in the visa procedure from 12 years to 6 years, 2017.

¹⁹ FRA, [Handbook on European law relating to asylum, borders and immigration](#), 2014.

²⁰ [FRA director's statement](#) to the European Parliament's Special Committee on Terrorism (TERR committee), 8 January 2018.

²¹ See: European Commission [Impact Assessment](#) of the proposal for the revision of the Visa Code; EPRS initial appraisal of this impact assessment: A. Maniaki-Griva, [Revision of the EU visa policy](#), November 2014.

²² The European Commission's right to withdraw a legislative proposal has been the subject of a CJEU ruling: see this [EPRS blogspot](#).

The Commission has already given indications as regard the scope of these new proposals: the proposal related to the Visa Code will 'address the current divergent practices that lead to a competition among Member States in issuing multiple-entry visas by putting in place a **more harmonised visa policy**. At the same time some visa-issuing rules (for instance those related to visas with long validity and visa fees) should be reviewed to ensure that they can play a part in our **readmission policy**'.²³ The VIS legal framework will be further improved to support visa processing, 'including on data protection related aspects and **access for law enforcement authorities**, to further expand the use of the VIS for new categories and uses of data and to make full use of the **interoperability instruments**'.²⁴

Concerning the Visa Code, the Commission conducted its stakeholders' [consultation phase](#) from 24 November 2017 to 2 February 2018. On the VIS, the Commission published an [inception impact assessment](#), in which it listed a series of measures that could be envisaged. These include: the introduction of the possibility to have the information on national long-stay visas, including biometrics, registered in the VIS; the introduction of the possibility to reduce the age limit for collecting fingerprints of children (from 12 to 6 years of age); integration of the VISMail mechanism into the VIS; better provision of statistics in order to better meet stakeholders' needs; improved data-quality rules and the production of data-quality reports; the possibility to adapt the configuration of the central system to better respond to the need to rapidly and efficiently adapt to availability needs in periods of disruption; scrapping obsolete provisions of the current law; the introduction of the possibility to incorporate copies of Schengen visa applicants' travel documents in the VIS. Concerning the closely related issue of interoperability, the Commission published, in December 2017, a [proposal](#) for a regulation on establishing a framework for interoperability between EU information systems (borders and visa).²⁵

8. European Parliament's position

8.1. State of play of the trilogue on the visa package

In April 2016, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted a [report](#) in which it proposed significant changes to the Commission's proposed 2014 revision of the Visa Code (Rapporteur: Juan Fernando López Aguilar, S&D, Spain). During the trilogue phase, important areas of disagreement emerged, notably on the humanitarian visa; the link between general visa facilitation and cooperation on readmission; mandatory representation; and the definition of close relatives.

As regards the **humanitarian visa**, LIBE committee members proposed: to specify that the regulation shall apply without prejudice to a possible application for international protection in the territory of the Member States; to permit consulates to examine and decide on an application when they consider it necessary on humanitarian grounds; to allow persons seeking international protection to apply directly at any consulate or embassy of the Member States; to exempt such persons from the standard period of validity for a period of 12 months, renewable in accordance with the circumstances of persons requesting international protection. On this issue, the European Commission and the Council both agreed that the Visa Code was not the right instrument for allowing such international protection and that this needed to be discussed as part of the proposal for a regulation on the EU resettlement framework, tabled in July 2016.²⁶ On 8 June 2017, the rapporteur presented the state of play to LIBE committee members.²⁷ He pointed out that there was a lack of cooperation on this dossier by the Council and that the discussions had been hindered by security concerns, which also led to the withdrawal of the touring visa. He furthermore insisted on the fact that the introduction of a humanitarian visa remained a clear priority for the EP. Both EPP and ECR shadows (respectively Heinz Becker and Helga Stevens) recalled the CJEU ruling related to the humanitarian visa (see point 4) and stressed that disagreements on this issue should not block further negotiations on the Visa Code.

²³ European Commission, [Communication](#) on the Delivery of the EU Agenda on Migration, Brussels, 27.9.2017 COM(2017) 558 final.

²⁴ Ibid.

²⁵ See the following EPRS analyses on this topic: C. Dumbrava, [European information systems in the area of justice and home affairs](#), May 2017; C. Dumbrava, [Interoperability of European information systems for border management and security](#), June 2017; K. Eisele, Initial Appraisal of a European Commission Impact Assessment on [Interoperability between EU information systems for security, border and migration management](#), February 2018.

²⁶ See: Council Presidency, Visa Working Party, [12113/16](#), Brussels, 20 September 2016.

²⁷ See: EP TV, [LIBE meeting of 8 June 2017](#), 09:15 – 09:30, Point 6, Union Code on Visas.

ALDE shadow, Gérard Deprez, on the other hand, recalled that the majority of the EP had given a clear mandate to the rapporteur on advancing the issue of the humanitarian visa at EU level. In September 2017, Parliament's negotiating team withdrew the amendment related to the humanitarian visa. Instead, a legislative own-initiative report will be drawn up to call upon the Commission to present a separate legislative act on the humanitarian visa and the elements that such a separate act should contain.²⁸

Concerning the **link between general visa facilitation and cooperation on readmission**, the Council proposed the introduction of a legal link between readmission and the application of procedural facilitations in the context of the visa policy, to ensure that facilitations are possible only for nationals of third countries that cooperate on return and readmission.²⁹ For this purpose, it proposed a harmonised common list of cooperating (or non-cooperating) countries that could possibly be complemented by national lists or could leave room for national assessment of the cooperation on return and readmission.³⁰ Here the Parliament could not agree on the principle of having different lists.

Regarding consular organisation, the Commission's proposal provided that if the Member State competent for processing the visa application is neither present nor represented in a given third country, the applicant is entitled to apply at any of the consulates present (**mandatory representation**). This provision was supported by the EP, which proposed to go even further and add a criterion based on distance to further reduce the burden on the applicant. Moreover, a new article was proposed on the establishment of Schengen visa centres. On this aspect, the Council opposed this representation to be made mandatory, on the grounds that 'the situation was improving since more and more representation arrangements were concluded between Member States'.³¹ In relation to the issue of **close relatives**, the EP proposed procedural facilitations for family members of a Union citizen. The Council here took the view that Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States was better suited for creating such facilitations.³²

Beyond these areas of disagreement between the co-legislators, the EP fully supported the proposals of the Commission as regards the provisions on the issuing of **MEVs to VIS-registered regular travellers**. It furthermore put forward additional amendments and proposals. These include, inter alia, **better monitoring of cooperation with external service providers**; further **modernisation of the visa application procedure** (such as introducing the possibility of making an online application) and further **facilitation of the steps involved in lodging an application**; further clarification regarding the **procedure for appeal** when a visa is refused; and a new provision introducing a consular **procedure for complaints**.

It should be noted that the trilogue phase concerning negotiations on the Visa Code also triggered procedural and institutional discussions on the **recast technique** and **delegated acts**. On the recast technique, the EP expressed concerns that the recast rules limit the powers of the co-legislators. On issues related to delegated acts, the EP expressed concerns over the fact that many aspects of the proposal were to be adopted at a later stage by implementing acts, thus reducing the legislator's role. In particular, the EP proposed that the Handbook for the implementation of the Visa Code be adopted by means of a recommendation by the Commission instead of a delegated act, which the Commission refused.

8.2. European Parliament resolutions

While the issue of short-term visas and the computerised system that facilitates related exchange of data – the VIS – has not been specifically addressed in a single EP resolution, it has been touched upon in several,

²⁸ See: [Procedure File 2017/2270\(INL\)](#). The INI report will be accompanied by a European Added Value Assessment, to be produced by DG EPRS. Scheduled to be published in May 2018, it will be aimed at evaluating the potential impacts and at identifying the advantages of the proposals made by the European Parliament.

²⁹ Council of the European Union, [mandate for negotiations](#) with the European Parliament, 8435/16, Article 13, Brussels, 29 April 2016.

³⁰ See: Council of the European Union, [Connection between the facilitations set out in the Visa Code and readmission](#), 5509/2016, Brussels, 25 January 2016.

³¹ See: Council Presidency, [Visa Working Party](#), 12113/16, Brussels, 20 September 2016.

³² Ibid.

inter alia, referring to: visa liberalisation and visa reciprocity; the humanitarian visa; the application of visa bans; and the VIS as an instrument for countering terrorism.

As regards the **visa liberalisation** roadmap with Turkey, the [resolution of 6 July 2017](#) on the 2016 Commission report on Turkey encourages 'the Turkish Government to comply fully with the final outstanding criteria' and underlines that 'the revision of its anti-terrorism legislation is a key condition to ensuring fundamental rights and freedoms and that visa liberalisation will only be possible once all the criteria have been met'. As regards the Eastern Partnership, a November 2017 [recommendation](#) touched upon the issue of visa liberalisation (including providing support to Moldova, Georgia and Ukraine in implementing the visa liberalisation agreement). In a [resolution](#) of 14 September 2016 on EU relations with Tunisia, Parliament furthermore strongly recommended that Member States show solidarity with Tunisia by facilitating the issuing of visas for entrepreneurs, teachers, students, researchers and artists. Similar support for visa liberalisation to promote entrepreneurship, tourism and cultural exchanges has also been demanded in a [resolution](#) of 13 December 2016 on a coherent EU policy for cultural and creative industries, which underlines the need to remove obstacles to the mobility of artists and culture professionals. Similarly, in its [resolution](#) of 29 October 2015 on new challenges and concepts for the promotion of tourism in Europe, the Parliament underlined the need for initiatives 'aimed at promoting tourism and for greater flexibility and consistency in respect of tourist visa arrangements'.

In its [resolution](#) of 2 March 2017 on obligations of the Commission in the field of **visa reciprocity**, Parliament considered that the Commission is legally obliged to adopt a delegated act temporarily suspending the exemption from the visa requirement for Canadian and US nationals. In its May 2017 [follow-up](#), the Commission reported on significant progress made with Canada and on a 'result-oriented process' launched with the US. In its view, the adoption of a delegated act would be 'counterproductive' and 'would not serve to achieve the objective of visa-free travel for all EU citizens'.

In its [resolution](#) of 2 April 2014 on the mid-term review of the Stockholm Programme, the Parliament called on the Member States 'to make use of the current provisions of the Visa Code and the Schengen Borders Code allowing the issuing of **humanitarian visas**, and to facilitate the provision of temporary shelter for human rights defenders at risk in third countries'. In its [resolution](#) of 12 April 2016 on the situation in the Mediterranean, the EP called on Member States to use any existing possibilities to provide humanitarian visas, particularly for vulnerable persons, notably at Union embassies and consular offices in countries of origin or transit countries.

As regards foreign policy and the possibility to apply sanctions – **visa or travel bans** – to targeted governments of third countries or non-state entities and individuals,³³ the Parliament has pledged on several occasions to adopt a consistent policy in this field. Parliament has issued dedicated resolutions on the matter – notably recommending to the Council a visa ban on Russian officials involved in a torture case in [Russia](#), and again on senior Congolese officials and armed forces agents responsible for violent repression of demonstrations in [Congo](#).

Finally, in relation to security and terrorism, in its [resolution](#) of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations, the Parliament supported the optimisation of the use of and contributions to the SIS and the VIS.

8.3. Questions by Members of the European Parliament

MEPs have addressed several questions related to the EU Visa Code and the VIS to the European Commission, in writing or orally. This section provides a selection of relevant questions by MEPs from the current parliamentary term. These questions can be clustered around key areas of concern that mostly echo the above-mentioned EP resolutions: visa reciprocity; visa liberalisation; the humanitarian visa; EU Member States' access to the VIS; and malpractice in visa processing.

³³ See: European Commission, Service for Foreign Policy Instruments: [Sanctions](#).

Questions regarding **visa reciprocity** have regularly been addressed to the Commission, especially as regards restrictions applied in the US and Canada towards some EU citizens – in particular from Romania, Bulgaria, Croatia, Cyprus and Poland.³⁴ In its latest reply on this issue, the Commission referred to its [press release](#) from 2 May 2017 providing information regarding the latest developments. On the other hand, questions have also been raised on the possible impact the lifting of the visa waiver with the US and Canada would have on the tourism industry.³⁵ In its [reply](#) on this aspect, the Commission mentions a possible drop in the number of visitors by 5.5 million persons and a decrease by US\$7.5 billion of the money spent in Europe (compared to the 2017 baseline level), should visas be reintroduced for US and Canadian visitors.

As regards **visa liberalisation** with some third countries, the visa liberalisation roadmap with Turkey has raised particular concerns among MEPs. In its latest [reply](#) on the topic from 18 July 2017, the Commission recalled that the roadmap must be implemented before visa-free travel can be granted to Turkey and that it encourages Turkey's efforts to complete the delivery of all outstanding benchmarks. It also affirmed it will continue to closely monitor these developments, including those with regard to respect for human rights.

With regard to the **humanitarian visa**, questions have been raised in the context of the above-mentioned Belgian case and the subsequent CJEU ruling (see point 4).³⁶ In its [reply](#), the Commission recalled the context of the trilogue negotiations on this matter (see point 8.1).

Questions have furthermore drawn attention to **malpractices and possible cases of corruption in visa processing** in Member States' consulates. Cases of visa fraud have, for instance, been reported in Ukraine, Russia and Iraqi Kurdistan.³⁷ In its [reply](#) to the latter case, the Commission underlined that such malpractices remain very rare and that the relevant authorities of the Member States concerned had taken appropriate action.

In relation to the VIS, a question has been raised regarding the **lack of full access** of Bulgaria, Romania, Croatia and Cyprus to the system.³⁸ The Commission here [recalled](#) that these four Member States do not apply the Schengen *acquis* and do not yet participate in the application of the VIS and Visa Code Regulations. The Commission however stressed that it supports both the use by Member States of the different databases, and interoperability between them. It underlined that, following the final report of the high-level expert group on information systems and interoperability (referred to in point 3 above), it will consider measures to further boost the interoperability of EU information systems, taking into account the situation of those four Member States as regards their access to the VIS.

8.4. Citizens' petitions

Among the citizens' petitions to the European Parliament that are related to short-term visas and have been deemed admissible, the above-mentioned concerns related to **visa reciprocity**³⁹ and the process of **visa liberalisation** with third countries that do not respect human rights⁴⁰ have also been raised. Citizens have also complained about the difficulties in obtaining a short-term visa in some specific cases, such as school exchange programmes.⁴¹ A petitioner has also called for the establishment of a single visa office for countries

³⁴ Questions for written answer, [E-005580-17](#), 7 September 2017 (Laurențiu Rebegea, ENF); [E-002875-17](#), 25 April 2017 (Maria Grapini, S&D).

³⁵ Questions for written answer, [P-000164-17](#), 13 January 2017 (Davor Škrlec, Greens/EFA); [E-000445-17](#), 27 January 2017 (Momchil Nekov, S&D).

³⁶ Questions for written answer, [P-009369-16](#), 13 December 2016 (Philippe Lamberts, Greens/EFA); [E-001564-17](#), 8 March 2017 (Elena Valenciano, Juan Fernando López Aguilar, S&D).

³⁷ Questions for written answer, [E-002775-17](#), 18 April 2017 (Mark Demesmaeker, Peter van Dalen, ECR); [E-001756-17](#), 15 March 2017 (Josef Weidenholzer, S&D); [E-001399-17](#), 1 March 2017 (Lorenzo Fontana, ENF).

³⁸ Question for written answer, [P-002423-17](#), 31 March 2017 (Filiz Hyusmenova, ALDE).

³⁹ Petition [0745/2017](#); Petition [0414/2017](#); Petition [2554/2014](#); Petition [0623/2014](#); Petition [2407/2013](#); Petition [0950/2013](#).

⁴⁰ Petition [0264/2017](#) and Petition [0235/2016](#) (related to Turkey); Petition [1417/2014](#) (related to Peru); Petition [0948/2014](#) (related to the United Arab Emirates).

⁴¹ Petition [0690/2015](#). This case involved an exchange programme between Russia and Germany.

in the Schengen area.⁴² In relation to security concerns, petitions have also been submitted to ban extremist/terrorist groups from entering the Schengen area.⁴³

9. Academic literature

EU visa policy has been the subject of numerous academic publications, in particular on the following aspects: access to the Schengen area; the linkage between mobility and security and the related use of databases; and the humanitarian visa.

Many academics have noted that EU visa policies and the ways in which they have developed have created an **unequal and/or asymmetrical access to mobility in the Schengen area**. In particular, the overall trend in the issuance of short-term visas shows that the EU is increasingly open to eastern European countries and emerging economies, yet displays a more rigid attitude towards nations from across the Mediterranean.⁴⁴ The notion of 'Fortress Europe' has often been used to describe restrictive policies applied at the EU external borders.⁴⁵ On the other hand, scholars note that Schengen visa liberalisation – the establishment of 'white lists' of countries whose citizens are not required to obtain a visa in advance of their travel – has had a positive impact on trans-border mobility and has opened up opportunities for business and tourism. Moreover, it has triggered important technical reforms in the field of justice and security in these countries to facilitate cooperation with the EU.⁴⁶ Closely linked to these contrasting approaches involving visa liberalisation on the one hand, and increased visa restrictions, on the other,⁴⁷ is the argument that **EU visa policies have been increasingly influenced by security concerns**, thus leading to the 'securitisation' of mobility and migration.⁴⁸ It has been noted, for instance, that some non-EU citizens (third countries' nationals, TCNs) are most often the subject of suspicion by default (rather than being perceived as legitimate travellers), based on the 'risks' they are supposed to pose when accessing the EU.⁴⁹ Such attitudes create differentiation between wanted and non-wanted individuals in the Schengen area.⁵⁰

The establishment of large-scale IT systems in the area of freedom, security and justice (AFSJ) (that is, the VIS, the SIS II and Eurodac) and the **linking of visas with biometric databases** to enhance EU security capabilities have been the subject of abundant academic comments. Concerns have particularly been raised as regards the increasing use of such systems to pre-screen or filter applicants so as to strengthen the differentiated approach towards TCNs outlined above.⁵¹ The reliability of these databases, as well as their impact on fundamental rights and data protection have also been extensively discussed and have also raised concerns. In terms of efficiency, the use of border controls as a dimension of the EU's counter-terrorism policy has also been examined, underlining the lack of 'systematic reflection in the EU institutions' on the exact role border controls have played in the prevention of terrorist attacks in the EU.⁵² Furthermore, it has

⁴² Petition [0873/2015](#).

⁴³ Petition [0397/2015](#) (related to an extremist group involved in Ukraine); Petition [0897/2017](#) (related to terrorist groups using alleged loopholes in the Polish procedures).

⁴⁴ C. Finotelli and G. Sciortino, 'Through the gates of the fortress: European visa policies and the limits of immigration control', *Perspectives on European Politics and Society*, Vol. 14, Issue 1, 2013.

⁴⁵ H.-J. Albrecht, 'Fortress Europe – Controlling Illegal Immigration', *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 10, Issue 1, 2002.

⁴⁶ R. Hernandez i Sagrera, [The impacts of visa liberalisation in Eastern Partnership countries, Russia and Turkey on trans-border mobility](#), Study, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, March 2014. For a general assessment of the negative impacts travel visa requirements have on tourism in quantitative terms, see: R.A. Lawson, S. Roychoudhury, 'Do travel visa requirement impede tourist travel?', *Journal of Economics and Finance*, Vol. 40, Issue 4, 2016.

⁴⁷ For further scientific assessments of mobility and the obstacles before it, see: Bigo and al., 'Mobilités sous surveillance, Perspectives croisées UE-Canada', *Athéna*, 2009; M. Agier, *Borderlands: Towards an Anthropology of the Cosmopolitan Condition*, Polity Press, 2016.

⁴⁸ J. Huysmans, 'The European Union and the securitization of migration', *Journal of Common Market Studies*, Vol. 38, Issue 5, 2000.

⁴⁹ D. Bigo, S. Carrera, E. Guild (eds.), *Foreigners, Refugees or Minorities?: Rethinking People in the Context of Border Controls and Visas*, Ashgate, 2013; F. Zampagni, 'Unpacking the Schengen Visa Regime. A study on Bureaucrats and Discretion in an Italian Consulate', *Journal for borderland studies*, Vol. 31, Issue 2, 2016.

⁵⁰ E. Guild, S. Carrera, '[EU borders and their controls: preventing unwanted movement of people in Europe?](#)', CEPS Essay, No 6, November 2013; On ethics and alterity, see: E. Lévinas, *Totality and Infinity: An Essay on Exteriority*, first published in English by Duquesne University Press in 1969.

⁵¹ M.-L. Basilien-Gainche, 'The EU external edges: borders as walls of ways?', *Journal of territorial and maritime studies*, North Asian History Foundation, (2), 1, 2015; S. Scheel, 'Real fake? Appropriating mobility via Schengen visa in the context of biometric border controls', *Journal of Ethnic and Migration Studies*, issue 1,17, 2017.

⁵² S. Leonard, 'Border controls as a dimension of the European Union's counter-terrorism policy: a critical assessment', *Intelligence and national security*, Vol. 30, Issue 2-3, 2015; V. Kostadinova, *The European Commission and the Transformation of EU Borders*, Springer, 2017.

been emphasised that inaccuracy of data and mistakes made in the systems' entries are not uncommon and can have a long-term impact, such as being denied a visa.⁵³ This echoes recent FRA findings⁵⁴ and raises the question about effective legal remedies for TCNs who are 'stored' in these databases.⁵⁵ Overall, the rise of these technologies and their uses has spurred academic comments on the extent to which this transforms 'the way in which bureaucracies make decisions' and treats different groups of people.⁵⁶ Moreover, the **extension of access rights to these AFSJ-related databases** (the SIS II, the VIS and Eurodac), as a result of which they can be accessed by national law enforcement agencies and Europol, is controversial, as it conflates the management of mobility (for travel, migration and/or asylum) with the fight against crime and raises questions as regards the principle of purpose limitation.⁵⁷ This central aspect of the current EU **data protection** regime⁵⁸ appears to be threatened by the current use of these databases, and even more so in a context where interoperability between these databases is being discussed.

In relation to the **humanitarian visa**, many legal experts have argued that the CJEU's ruling provided a narrow interpretation of the Visa Code and failed to address the clear question of the Belgian court on the extraterritorial application of the EU Charter on Fundamental Rights.⁵⁹

Table: VIS Regulation 767/2008 and Regulation 810/2009 establishing a common Visa Code

EP committee responsible at the time of adoption of the two regulations: LIBE
Date of adoption of original legislation in plenary: 7 June 2007 (VIS Regulation) and 2 April 2009 (Visa Code)
Planned dates for review: In 2014, the Commission submitted a Visa package that included a proposal to recast and amend the Visa Code. The proposal was withdrawn in late 2017. In its work programme for 2018, the Commission announced that proposals will be tabled to revise the Visa Code (13 March) and upgrade the VIS (16 May).

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Manuscript completed in February 2018. Brussels © European Union, 2018.

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⁵³ Brouwer E., '[The Other Side of the Moons. The Schengen Information System and Human Rights: A Task for National Courts](#)', CEPS Working Document, April 2008.

⁵⁴ [FRA director's statement](#) to the TERR committee, 8 January 2018.

⁵⁵ Brouwer E., *Digital Borders and Real Rights*, Nijhoff Publishers, 2008; Meijers Committee: [Draft amendments](#) to the proposal on the Visa Code (recast, COM(2014) 164 final) in order to safeguard the right to an effective remedy in cases of representation, submitted in November 2014, reference CM1412.

⁵⁶ Rijpma J., 'Brave New Borders: The EU's Use of New Technologies for the Management of Migration and Asylum', in Cremona M. (ed.), *New Technologies and EU Law*, Oxford University Press, 2017.

⁵⁷ *Ibid.*, p.216

⁵⁸ The principle of purpose limitation provides that data must be collected for 'specified, explicit and legitimate' purposes (purpose specification) and not be 'further processed in a way incompatible' with those purposes (compatible use), see Article 5(1)(b) of the General Data Protection Directive.

⁵⁹ Brouwer E., 'The European Court of Justice on Humanitarian Visas: Legal integrity vs. political opportunism?', [CEPS Commentary](#), 16 March 2017; For a recent state of play, see the [intervention](#) of Violeta Moreno-Lax (Queen Mary University of London) in 24 of January 2018 LIBE meeting on legal avenues for international protection; see also Jensen U.J., [Humanitarian visas: option or obligation?](#), Study for the Policy Department C, September 2014