



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**VISA 129
CODEC 356
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ENFOPOL 68
EUROPOL 39
COMIX 380**

NOTE

from : Presidency
to : Council

No. prev. doc. : 8185/07 VISA 115 CODEC 320 CATS 27 ENFOPOL 59 EUROPOL 35
COMIX 335

No. Cion prop. : 5093/05 VISA 1 CODEC 77 COMIX 5 + COR 1 (COM(2004) 835 final)
15142/05 CATS 83 ENFOPOL 174 EUROPOL 38 VISA 300 COMIX 803
(COM(2005)600 final)

Subject : a) Draft Regulation of the European Parliament and of the Council concerning the
Visa Information System (VIS) and the exchange of data between Member States
on short-stay visas
b) Council Decision concerning access for consultation of the Visa Information
System (VIS) by designated authorities of Member States and by Europol for the
purposes of the prevention, detection and investigation of terrorist offences and of
other serious criminal offences

I INTRODUCTION

The above-mentioned draft Regulation and draft Decision have been extensively discussed during the last months in the responsible bodies of the Council and with the European Parliament (EP).

The Mixed Committee at the level of senior officials discussed on 17 April 2007 outstanding questions on the basis of 8185/07 VISA 115 CODEC 320 CATS 27 ENFOPOL 59 EUROPOL 35 COMIX 335.

In respect of the draft Regulation, the Presidency concluded on the transfer of data to third countries and international organisations that further discussions would be based on the present version of Article 25B set out in 8185/07 and that delegations could agree to the suggested declaration on misuse set out in the same document.

It was agreed to submit the issues set out in chapter II to the Council for agreement.

II. ISSUES SUBMITTED TO COUNCIL/MIXED COMMITTEE

1. Systematic use of fingerprints at border controls

With regard to the systematic use of fingerprints at border controls under Article 16 of the draft Regulation, a number of different possibilities were discussed in the Mixed Committee. Based on these discussions, the Presidency suggests the following text as a basis for further contacts with the European Parliament:

"(1) For the sole purpose of verifying the identity of the holder of the visa and/or the authenticity of the visa and/or whether the conditions for entry to the territory of the Member States according to Article 5 of the Schengen Borders Code are fulfilled the competent authorities for carrying out checks at external border crossing points in accordance with the Schengen Borders Code shall, subject to paragraph 1a, have access to search using the number of the visa sticker, in combination with verification of the fingerprints of the holder of the visa.

(1a) For a period of 3 years after the start of operations, the search may be carried out using only the number of the visa sticker. As from one year after the start of operations, the period of 3 years may be reduced in the case of air borders in accordance with the procedure referred to in Article 39(2a)."

Council is invited to agree that this text should be used as basis for further detailed negotiations with the European Parliament.

2. Access to the VIS by designated authorities and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences

Concerning the draft Council Decision, there is broad agreement on the following compromise package:

- a) Link to the Framework Decision on Data Protection
 - Additional provisions on data protection that are already set out in the VIS Regulation (data security, liability, training, etc.) will be included in the Council Decision, subject to the necessary legal adaptations.
 - The adoption of the Framework Decision on Data Protection in the Third Pillar is not a condition for the application of the VIS Council Decision.

- b) Transfer of VIS data to third countries
 - The transmission of national VIS data is unaffected by the VIS Regulation and Council Decision.
 - The transfer of data to third parties by another Member State than the data owner, is possible in case of a serious and imminent threat and subject to the consent of the data owner.¹

- c) Access procedure: Central access points
 - The requests for accessing the VIS will be checked before the search by central access points.
 - The number of central access points is defined according to national law and depends on the organisational and the administrative structure of each Member State.
 - In case of a serious and imminent threat, the central access points only have a technical function, processing the requests immediately and verifying whether the conditions were fulfilled only afterwards.
 - Further additional provisions related e.g. to the search criteria and the reply on a hit are not accepted by the Council.

¹ The UK is of the opinion that requiring the consent of the data owner is an excessively restrictive condition.

However, ES and FR delegations find that the prior check by the central access points is overly bureaucratic.

The Presidency wishes to point out that the prior check is an essential issue for the EP. Nonetheless, the EP is willing to accept that in case of serious and imminent danger, there is no prior check meaning that the central access point processes the request immediately and only checks afterwards whether the conditions were fulfilled.

Taking this into account, Council is invited to agree on the compromise package as set out above as the basis for further detailed negotiations with the European Parliament.

The Presidency will present concrete wording for the Bridging Clause and the Decision to the appropriate bodies of the Council on the basis of the above conclusions taking into account further detailed negotiations with the EP.
