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NOTE

From: Presidency

To: Visa Working Party/Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein)

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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
- Presidency compromise proposals regarding the recitals

In view to the discussions in the Visa Working Party of 12-13 November 2018, delegations will find in the Annex the Presidency compromise suggestions regarding the recitals of the Proposal.

The changes are marked in **bold/underlined** for additions and in ~~strikethrough~~ for deletions.

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 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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Visa Information System (VIS) was established by Council Decision 2004/512/EC³ 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 Council⁴ 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 Council⁵ set out the rules on the registration of biometric identifiers in the VIS. Council Decision 2008/633/JHA⁶ 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.

¹ OJ C , , p. .

² OJ C , , p. .

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).

- (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 Council⁷ 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.
- (4) The Council endorsed a Roadmap to enhance information exchange and information management⁹ 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.

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.

⁹ Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area (9368/1/16 REV 1).

- (5) In Council Conclusions of 9 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems¹⁰, 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 study¹¹ 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 study¹² conducted an analysis of necessity and proportionality and concluded that it would be necessary and proportionate to extend the scope 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.
- (7) The Communication of the Commission of 14 March 2018 on adapting the common visa policy to new challenges¹⁴ reaffirmed that the VIS legal framework would be revised, as part of a broader process of reflection on the interoperability of information systems.

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.

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 study¹⁵ 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 study¹⁶ 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 study¹⁷ 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 as part of the short-stay visa procedure, and if the national legislation of the Member States allow also when processing long-stay visa and residence permit applications, should be the primary mean of registering the facial 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.

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~~ **also** ~~to contributing~~ **contribute to assess whether the entry of the third country national in the Union could pose a threat to public security or to the public health in the Union and** to assess **in accordance with the relevant Union and national legislation** the identity of the document holder, the authenticity and the validity of the long-stay visa or residence permit. **As Eurodac 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 assessment 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 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 watchlists, 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. **If a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons is established at Union level, VIS may be able to query it.**
- (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.
- (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 '~~match~~^{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 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.
- (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**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 philosophical belief, trade union membership, membership of a national minority, property, birth, disability or sexual orientation..
- (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 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 holding a short-stay visa, a long stay visa or a residence permit are in possession of the 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 Council¹⁸.

¹⁸ 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).

- (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.
- (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 Council¹⁹ 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 Council²⁰.
- (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.

¹⁹ 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).

²⁰ 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).

- (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 Council²¹, is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.
- (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 has 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 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 Council²², [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 (EC) No 45/2001 of the European Parliament and the Council²³ 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 ...

²¹ 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).

²² Regulation (EU) .../... of the European Parliament and the Council [full title] (OJ L ..., ..., p. ...).

²³ 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 Council²⁴, 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, 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, eu-LISA should be able to develop a capability for statistical reporting to the Member States, the Commission, and the European Border and Coast 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.²⁵
- (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.

²⁴ 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).

²⁵ 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 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/EC²⁶; 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/EC²⁷; 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 latter's association with the implementation, application and development of the Schengen *acquis*²⁸ which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC²⁹.
- (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*³⁰ 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/EC³¹ and with Article 3 of Council Decision 2008/149/JHA³².

²⁶ 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).

²⁷ 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).

²⁸ OJ L 176, 10.7.1999, p. 36.

²⁹ 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).

³⁰ OJ L 53, 27.2.2008, p. 52.

³¹ 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).

³² 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*³³ 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/EU³⁴ and with Article 3 of Council Decision 2011/349/EU.³⁵
- (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) 2017/1908³⁶,

HAVE ADOPTED THIS REGULATION:

[...]

³³ OJ L 160, 18.6.2011, p. 21.

³⁴ 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).

³⁵ 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).

³⁶ 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).