As explained by the Presidency at the JHA Counsellors' meeting on 13 November 2019, the co-legislators have discussed issues concerning automated checks in a more thematic manner during the most recent technical trilogues. With facilitation provided by the Commission, the co-legislators have discussed in detail matters concerning i) which databases are to be automatically queried, ii) what is the purpose of each check, iii) procedures concerning, and authorities involved in these checks, and iv) technical provisions.

During the discussions on point iv), technical provisions, the Commission brought to the attention of the co-legislators the fact that certain provisions might be missing from the VIS proposal and thus from the Council and EP positions as well. They concern certain technical issues on automated checks in databases and interoperability with other EU information systems, such as:
– amendments of other legal acts to allow access to other databases for the purpose of VIS automated checks;
– interoperability with those other databases;
– detailed lists of data to be compared in each database;
– rules on what triggers a hit and on data retention (implementing acts);
– keeping records/logs of data processing, etc.

These missing provisions are similar to the elements included in the proposal for the ETIAS consequential amendments, which set out details on a series of technical issues that are essential to the operation of ETIAS. The Commission tabled the ETIAS consequential amendments proposal in January 2019. Without prejudice to the outcome of negotiations on this file, similar technical provisions related to the interoperability of the VIS with other EU information systems need to be incorporated in the amendment of the VIS Regulation currently under discussion. That would also involve amending other legislative acts establishing ETIAS, ECRIS-TCN and SIS. It should also be noted that the discussion on the VIS Regulation is at a more advanced stage than the ETIAS consequential amendments, on which the EP has decided to prepare its own impact assessment.

During the technical trilogues, this issue was discussed and the Commission was asked to examine in more detail, which specific elements were currently missing. The Presidency brought to the attention of the European Parliament and the Commission that the Council’s mandate does not currently include these provisions; this means that delegations must be consulted before any progress can be made on this matter.

To address this issue from a procedural point of view, the Presidency identified the following ways forward:

a) as part of the ongoing technical trilogues on the VIS Regulation, the Commission could be invited to present a text on the missing technical elements as part of its facilitating role during the negotiations; consultation of, and reporting to delegations could proceed as part of the VIS trilogue process;

---

1 The Council’s mandate for negotiations with the EP is set out in 9229/19.
b) setting out some or all of the missing elements in implementing measures (i.e. delegated/implementing acts);

c) taking no action for the time being, apart from stipulating in the text that those provisions would be the subject of a separate legal instrument (solution found in the ETIAS Regulation, Article 11(2)), which would result in VIS consequential amendments;

d) a combination of the above-mentioned approaches.

The Presidency underlines that if these provisions are not included in the current proposal and are not adopted within a reasonable timeframe, the implementation of the interoperability framework will be delayed. **Therefore, as the most pragmatic and efficient way forward, the Presidency suggests combining two approaches, namely, a) and b).** The Presidency would recommend including some missing technical provisions in the ongoing interinstitutional discussions, so as to ensure that a coherent and definitive outcome can be reached on the VIS Regulation. Some other more technical, non-essential components could be set out in implementing measures at later stages.

During the JHA Counsellors meeting on 27 November 2019, the Presidency and the Commission will provide more information and delegations will be invited to provide their views on the following question:

- **Do delegations share the Presidency’s assessment that the missing technical provisions should be dealt with during the ongoing interinstitutional negotiations?**

Should the delegations be able to support the Presidency’s position on this matter, a possible way forward could be for the co-legislators to confirm, during the political trilogue on 11 December 2019, that they will handle this matter as part of the ongoing discussions.