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2018/0152 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council on the adoption of a Regulation amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System, and a Regulation amending Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 as regards the establishment of the conditions for accessing other EU information systems for VIS purposes

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2018) 302 final – 2018/0152 COD):	16 May 2018.
Date of the opinion of the European Economic and Social Committee:	19 September 2018.
Date of the opinion of the European Data Protection Supervisor:	12 December 2018.
Date of the position of the European Parliament, first reading:	13 March 2019.
Date of adoption of the position of the Council:	27 May 2021.

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The specific objectives of this proposal are to:

(1) facilitate the visa application procedure;

(2) facilitate and strengthen checks at external border crossing points and within the territory of the Member States;

(3) enhance the internal security of the Schengen area by facilitating the exchange of information among Member States on third-country nationals holders of long-stay visas and residence permits.

A number of ancillary objectives are also pursued, namely to:

(4) facilitate identity checks of third-country nationals, on the territory of a Member State, by migration and law enforcement authorities;

(5) make it easier to identify missing persons;

(6) assist in the process of identifying and returning any person who may not or no longer fulfil the conditions for entry to, stay or residence in the Member States;

(7) help law enforcement authorities access data of applicants for and holders of short-stay visas (which is already possible under current rules), and extend this access to holders of long-stay visas and residence permits, where necessary for the prevention, investigation, detection or prosecution of serious crime and terrorism, while ensuring high standards of data protection and privacy;

(8) gather statistics to support evidence-based European Union migration policy making.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council as adopted in the 1st reading fully reflects the agreement reached in the trilogue negotiations between the European Parliament, the Council and the Commission, as concluded on 16 December 2020.

The agreement preserves the substantial elements and novelties proposed by the Commission, some of which are subject to certain modifications, as outlined below.

As regards the automated queries in other information systems, the European Parliament and the Council largely agreed with the list of databases to be queried by the Visa Information System (VIS) as proposed by the Commission[1], albeit with conditions and additional safeguards attached to some of them. More detailed provisions were laid down on the manual verification and follow-up of the hits, which will be attributed to different authorities, depending on the source and sensitivity of the data that triggered the hit. A delegated act will define the detailed rules for the queries and verifications. A number of 'consequential amendments' bring the legal instruments of the queried information systems in full alignment with the new provisions on the automated queries.

Long-stay visas and residence permits will be recorded in the Visa Information System and subject to automated queries in other information systems already at the time of application, not only after having been issued. Access rights of certain authorities to data of persons having held residence permits for more than 10 years will be limited.

Regarding biometrics, the European Parliament and the Council agreed on the proposed lowering of the fingerprinting age for minors from 12 to 6 years, but also introduced an upper age limit for fingerprinting at 75 years. At the same time a number of safeguards and access limitations for children's biometrics will be introduced. Live-taken facial images will be stored in the Visa Information System and used for biometric matching, including to verify the identity of or to identify persons by searching those images against the Visa Information System, subject to certain conditions and strict safeguards.

Specific risk indicators will be integrated as an automated mechanism in the Visa Information System through which all short-stay visa applications will be screened. The procedures and the governance structure for these specific risk indicators are aligned with those for the European Travel Information and Authorisation System (ETIAS) screening rules[2].

The European Parliament and the Council accepted the provisions on the carrier gateway for checks of visas and residence permits in the Visa Information System. Carriers will be

[1] Entry-Exit System (EES), European Travel Information and Authorisation System (ETIAS), including the ETIAS watchlist, Schengen Information System (SIS), Eurodac, European Criminal Records Information System – Third Country Nationals (ECRIS-TCN), Europol data and Interpol Stolen and Lost Travel Document (SLTD) and Travel Documents Associated with Notices (TDAWN) databases.

[2] Article 33 of Regulation (EU) 2018/1240.

required to inform passengers who are refused boarding on how to request access to Visa Information System data. A derogation from those provisions will apply to carriers transporting groups overland by coach, for the first 18 months following the start of the application.

The provisions of the Visa Information System Establishing Decision[3] have been incorporated into the Visa Information System Regulation. The existing provisions on data protection have been aligned with similar recent legal instruments and the general data protection legal framework.

The agreement also includes provisions on the application of the amended regulation by the end of 2023 and on reinforced monitoring and reporting in the development phase.

The Commission supported the agreement reached at the trilogue negotiations. The upgraded Visa Information System, together with the Entry-Exit System and ETIAS, will provide the basis of a better management of the EU's external borders and enhance interoperability of all European systems for borders, migration, security and justice. The agreement thus makes an important contribution to the goal that all new and upgraded information systems be operational and fully interoperable by the end of 2023.

4. CONCLUSION

The Commission accepts the position taken by the Council.

[3] Council Decision 2004/512/EC.