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## **PROPOSAL**

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document SWD(2018) 195 final.

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Brussels, 16.5.2018  
SWD(2018) 195 final

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*Accompanying the document*

**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**

{COM(2018) 302 final} - {SWD(2018) 196 final}

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## Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
CFR	EU Charter of Fundamental Rights
CVCA	Country Verifying Certificate Authority
ECRIS-TCN	European criminal records information system regarding third country nationals and stateless persons
EU	European Union
EDPS	European Data Protection Supervisor
EES	Entry/Exit System
EIS	Europol data
ESP	European Search Portal
ESPs	External Service Provider
eu-LISA	European Agency for the operational management of Large-Scale IT Systems in the area of freedom, security and justice
ETIAS	European Travel Information and Authorisation System
EURA	EU readmission agreement
FADO	Database of False and Authentic Documents Online
FRA	EU Agency for Fundamental Rights
GDPR	General Data Protection Regulation
HLEG	High-level Expert Group
IA	Impact Assessment
ICAO	International Civil Aviation Organization
JHA	Justice and home affairs
JRC	Joint Research Centre

LEA	Law enforcement access
LSV	Long-stay visa
MRTD	Machine-readable travel document
MS	Member State
OJ	Official Journal
PA	Passive Authentication
REFIT	Regulatory Fitness and Performance Programme
RC	Residence card
RP	Residence permit
SIRENE	Supplementary Information Request at the National Entries – national single point of contact for SIS.
SIS	Schengen Information System
SLTD	Stolen and Lost Travel Documents database
TCN	Third-country national
TD	Travel document
TDAWN	Interpol's database of Travel Documents Associated with Notices
VH	Visa holder
VIS	Visa Information System

# 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

## 1.1. Visa Information System and the security of the Schengen area

The abolition of checks at internal borders of the states forming part of the **Schengen area** is one of the most valued achievements of EU integration. To uphold this achievement and as a response to the increase of irregular migration to the EU and the threat to internal security, in recent years **EU information systems for border management and security** have been considerably strengthened, new ones are being developed, and the interoperability between them has been established<sup>1</sup> with the aim of creating a framework for fast, seamless and systematic communication to face these challenges.

The common visa policy for short-stay visas is one of the Schengen area's "**flanking measures**" (together with the harmonisation of the external border controls, enhanced cross-border police cooperation, and the creation of the Schengen Information System (SIS)) accompanying the establishment of a common area without checks at internal borders. The common visa policy encompasses a set of harmonised rules<sup>2</sup>, allowing the Member States<sup>3</sup> to mutually recognise short-stay visas issued.

As stated in the Commission Communication on the Delivery of the European Agenda on Migration<sup>4</sup>, 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.

Around 18 million applications for short stays are lodged with the Member States every year by nationals of the over 100 countries around the world under visa obligation, and more than 90% of them are issued a visa. In an area without internal border controls, the risk of irregular migration and the risk to security and public order of one Member State have an impact on the other Member States. This is why the decision to issue a visa is a decision taken by national authorities, who should take into account not only their own interests but that of all Member States. The VIS was established in 2004, following several calls by the Council to have a common system to store visa data and it is operational since 2011. By January 2018, data on more than 52 million visa applications, with 52.27 million facial-images and nearly 50 million fingerprint sets had been entered in the VIS.<sup>5</sup>

In line with the April 2016 Communication on Stronger and Smarter Information Systems for Borders and Security, the Commission proposed additional information systems in the

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1 COM(2017) 794 final and COM(2017) 793 final.

2 Visa Regulation (539/2001) laying down the common "visa lists" of countries whose nationals require a visa to travel to the EU and those who are exempt from that requirement; Visa Code (Regulation 810/2009) establishing the procedures and conditions for issuing short-stay visas; Regulation 1683/95 laying down a uniform format for the visa sticker; and the VIS Regulation (767/2008) setting up the Visa Information System (VIS), in which all visa applications and Member States' decisions are recorded, including applicants personal data, photographs and fingerprints.

3 In this document, 'Member States' means Schengen Member States, i.e. EU Member States that are Schengen members, as well as the Schengen Associated countries.

4 COM(2017) 558 final, p.15.

5 Figures from EU-Lisa.

area of border management. The Entry/Exit System (EES) Regulation<sup>6</sup> will register entry, exit and refusal of entry information of third country nationals crossing the external borders of the Schengen area, thus identifying overstayers. The EES Regulation also amends the VIS Regulation and stipulates rules on interoperability between EES and VIS, establishing a direct communication channel between the two systems for the use of border and visa authorities. This will allow border authorities to verify the validity of the visa and the identity of a visa holder directly against the VIS at the external borders. Consular authorities will be able to consult the EES file of an applicant to verify the use made of previous visas.

The Commission also presented a proposal for a European Travel Information and Authorisation System (ETIAS)<sup>7</sup> aiming at a more efficient management of the EU's external borders, and improved internal security by introducing advance checks on all visa-free travellers before their arrival at the external borders.

In December 2017, the Commission presented a proposal to ensure interoperability between EU information systems for security, border and migration management<sup>8</sup>. The proposal also seek to facilitate and streamline access by law enforcement authorities to non-law enforcement information systems at EU level including the VIS, where necessary for the prevention, investigation, detection or prosecution of serious crime and terrorism. However, ensuring various information systems are interoperable is only the first step. In order to make use of interoperability, concrete measures need to be taken to make interoperable IT systems work together.

In addition to these legislative developments, in September 2017, the Commission Communication on the Delivery of the European Agenda on Migration<sup>9</sup> 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 and visa-free travel with improved migration, security and border management, and making full use of interoperability. In this context, the Commission presented a Communication on adapting the common visa policy to new challenges on 14 March 2018,<sup>10</sup> in parallel with a proposal to amend the Visa Code.<sup>11</sup> The proposal to amend the Visa Code aims to simplify and strengthen the visa application procedure, to make it easier for tourists and business travellers to come to Europe with a visa while strengthening the prevention of security and irregular migration risks, most notably by linking visa policy with the return policy. The VIS fits into this context as the electronic processing tool supporting the visa procedure. The March Communication also announced the work towards enhancing security by revising the VIS and making full use of interoperability. It furthermore announced the three main modalities in which enhanced security would be achieved: 1. by enhancing

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6 Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011.

7 COM(2016)731 of 16.11.2016.

8 COM(2017) 794 final and COM(2017) 793 final.

9 Cited above.

10 COM(2018)251.

11 COM(2018)252.

checks in visa processing using interoperability; 2. by closing remaining information gaps for borders and security through the inclusion of long-stay visas and residence documents in the VIS and 3. by addressing remaining information gaps in short-stay visa processing, in respect of fingerprinting age of applicants and keeping copies of travel documents.

## **1.2. Closing the information gap on long-stay visas and residence documents**

The Commission's April 2016 Communication on *Stronger and Smarter Information Systems for Borders and Security*<sup>12</sup> identified a need to address information gaps in the EU's architecture of data management, including on third country nationals holding a long-term visa. This Communication also signalled a shift from the principle of disconnected databases towards their inter-operability in full compliance with fundamental rights. On the other hand, the EU has also strengthened its data protection rules by adopting the General Data Protection Regulation and the Data Protection Directive for the police and criminal justice sector in 2016<sup>13</sup>. The new rules are based on principles of data protection by default and by design (privacy and data protection as key considerations from the earliest stages of development of any system).

On 10 June 2016, the Justice and Home Affairs (JHA) Council endorsed a roadmap to enhance information exchange and information management<sup>14</sup>. One of the objectives was to address the existing information gap in the documents issued to third-country nationals. The Roadmap concluded that the fragmentation of information through different Member States and systems is inefficient and could lead to errors when assessing a third-country national's situation and makes the border-crossing procedure more difficult.

The Final Report of the High-Level Expert Group on Information Systems and Interoperability (HLEG)<sup>15</sup> of May 2017 further described the existence of the information gap at EU level and recommended the Commission to undertake, as a matter of priority, a feasibility study on the establishment of a central EU repository containing information on the documents which allow a TCN to stay for a longer period than the 90 days within any 180 days allowed by the short-stay visa in a given Member State and whose issuance falls under national competence.

In its Conclusions of 9 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems<sup>16</sup>, the Council acknowledged that new measures might be needed in order to fill the current information gaps for border management and law enforcement, such as in relation to border crossings by holders of long-stay visas, residence cards 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, residence cards and residence permits, as recommended in the Final Report of the HLEG.

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12 COM(2016) 205 final (see page 3).

13 Regulation (EU) 2016/679 (OJ L 119, 4.5.2016) and Directive (EU) 2016/680 (OJ L 119, 4.5.2016).

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

15 <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3435>.

16 ST/10151/17.

The Report on the VIS Evaluation adopted in 2016<sup>17</sup> already included a recommendation for further development of the VIS to include these documents.

In response, the Commission undertook a study to assess the need for a centralised EU repository containing information on long-stay visas, residence permits and residence cards, including its necessity, technical feasibility and proportionality. It analysed whether including long-stay visas and residence documents in a central database was technically feasible and desirable, compared to the creation of a new database to store data on these documents. The study concluded that re-using the VIS structure to include these documents would be the most feasible option in terms of IT security, ease of implementation and cost-effectiveness.<sup>18</sup> The study also concluded on the need to further analyse the necessity and proportionality of such a measure, which is done in this impact assessment.

### **1.3. The VIS setup**

A comprehensive legal framework was adopted to establish the Visa Information System (VIS) as a large-scale IT-system for exchanging short-stay visa data between Member States<sup>19</sup>. The VIS was created for the purpose of processing data on short-stay visa applications. The purpose, functionalities and responsibilities accompanying the VIS are specified in the VIS Regulation and in a number of implementing acts<sup>20</sup>. 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 Dublin Regulation<sup>21</sup>;

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17 Report from the Commission to the European Parliament and the Council the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT Evaluation COM(2016) 655 final.

18 Full report of the study can be accessed at DG HOME website.

19 Council Decision 2004/512/EC of 8 June 2004 (the VIS founding Decision) established the VIS as a system for exchanging visa data between Member States; Regulation (EC) No 767/2008 of 9 July 2008 (the VIS Regulation) laid down the VIS’s purpose, functionalities and responsibilities, as well as the conditions and procedures for the exchange of visa data between Member States to facilitate the examination of visa applications and related decisions; Regulation (EC) No 810/2009 of 13 July 2009 (the Visa Code) set out the rules on the registration of biometric identifiers in the VIS. Council Decision 2008/633/JHA of 23 June 2008 (the Law Enforcement Access Decision) consequently 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.

20 For a full set of adopted acts see DG HOME online library.

21 Regulation 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application.

- Contribute to the prevention of threats to the internal security of any of the Member States.

The variety of the purposes requires that the VIS is used by different authorities (migration, law enforcement, and border control authorities) in full respect of access safeguards. The VIS allows to verify that the person presenting a visa is indeed its rightful holder, and that the visa is valid. Furthermore, by using VIS checks and issuance of visas are made easier and abuses can be better detected. In addition, asylum authorities can consult the VIS to determine the Member State responsible for the asylum procedures and migration authorities can use it to identify unambiguously third country nationals subject to a return procedure. Finally, law enforcement authorities (national and Europol) may consult the VIS when there are suspicions of terrorism or serious criminal offences (see Figure 1 below for VIS process and access).<sup>22</sup>

The VIS central system was developed by the Commission and handed over to eu-LISA<sup>23</sup> in December 2012. It was gradually rolled out in all Member States' consulates around the world between October 2011 and February 2016.

As one of the centralised EU information systems for security, border and migration management, the VIS is an integral part of the Commission's new approach to the management of data for borders and security<sup>24</sup> that seeks to ensure that border guards, law enforcement officers, immigration officials and judicial authorities have the necessary information at their disposal to better protect the external borders and enhance internal security for the benefit of all citizens. To achieve that, there is a need to maximise the benefits of existing information systems including the VIS, to develop the system to address information gaps including on long-stay visas, residence permits and residence cards, and improve the interoperability of EU information systems, in line with the April 2016 Communication on stronger and smarter information systems for borders and security<sup>25</sup> and the call by the European Council of 23 June 2017 to improve the interoperability between databases.<sup>26</sup>

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22 Such access must be necessary for 'the prevention, detection, or investigation of terrorist offences or other serious criminal offences,' it must be necessary in a specific case, and there must be reasonable grounds to consider that consultation of VIS data 'will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question' (Brouwer, 2010).

23 As provided by Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286, p. 1 of 1.11.2011.

24 COM(2017) 261 final (16.5.2017).

25 COM(2016) 205 final (6.4.2016).

26 European Council conclusions, 22-23 June 2017.

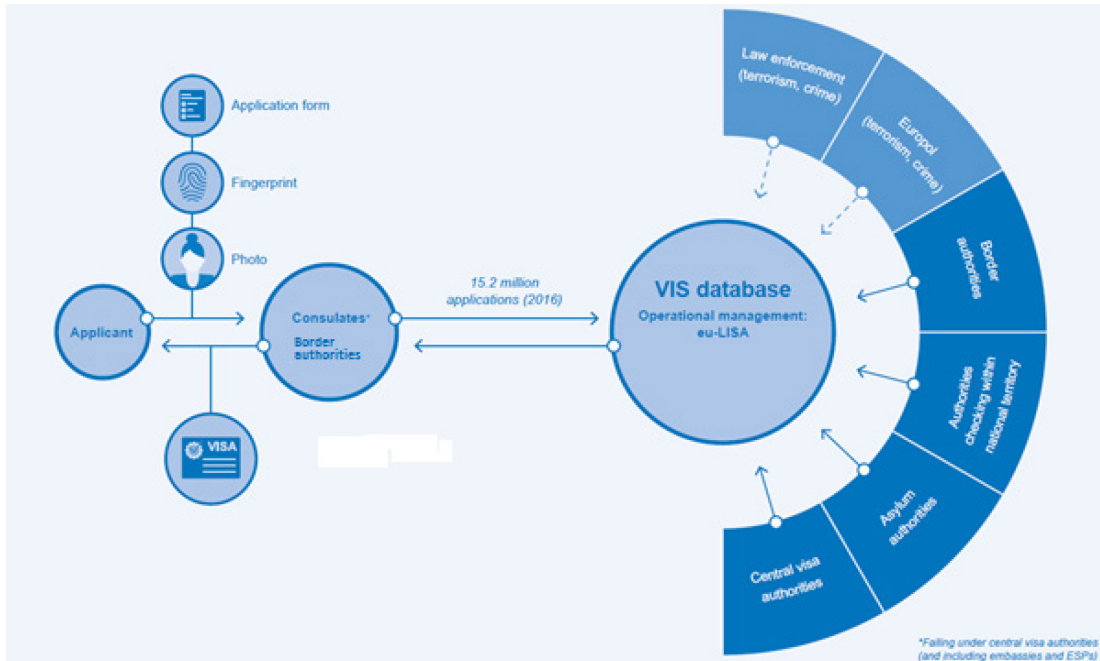


Figure 1: VIS process and access: current situation

#### 1.4. VIS REFIT Evaluation

As required by the VIS legal basis<sup>27</sup> and as part of the Commission's REFIT programme, in 2015, the Commission launched an evaluation of the system. The results of the evaluation and the ensuing recommendations to improve the functioning of the system were transmitted to the European Parliament and the Council on 14 October 2016.<sup>28</sup>

Overall, the VIS evaluation showed that the system is effective in meeting its objectives, in particular as regards simplifying and facilitating the visa application process, reducing the administrative burden of national administrations, helping to fight fraud, facilitating at external border crossing and within the territory of the Member States and identifying third country nationals for migration or return purposes or examining asylum applications.

The evaluation also demonstrated a need to further develop the VIS in order to better respond to new challenges in visa, border and security policies, including by seeking to establish interconnectivity with existing and upcoming IT systems and exploring ways to have information on national long-stay visas, including biometrics, registered in the VIS. It also showed the need for improvements in particular in relation to the monitoring of data quality and the production of statistics.

As regards the protection of personal data processed in the VIS, the evaluation found that the VIS has a very good track record: inspections on the spot by the European data Protection Supervisor<sup>29</sup> to monitor the lawfulness of the processing of personal data and security audits of the VIS central system have not led to identify any data protection concern. After five years of being in charge of the operation of VIS, eu-LISA has not received any complaint related to data protection in VIS. VIS has been subject to two auditing inspections by the EDPS – in 2012 and 2015. Furthermore, regular meetings

27 Article 50 of the VIS Regulation and Article 57(3) of the Visa Code.

28 COM(2016)655, SWD (2016) 327, SWD (2016) 328.

29 VIS Security audit, June 2012; VIS Inspection Report 2016; VIS Supervisory Coordination Group Activity Report 2015-2016; VIS Supervisory Coordination Group Report on access to VIS data subjects' rights, 2016.

(twice a year) of VIS Supervisory Coordination Group are held, where national data protection authorities and the Commission are gathered to discuss data protection issues arising from the activity of the VIS, providing a forum to raise any data protection concerns.

## 1.5. Consequences for the VIS

The migratory and security challenges faced by the EU in the recent years together with the update of EU information systems for border management and security and the development of new ones require the update of the VIS. A number of changes to be introduced in the VIS stem directly from the 2016 evaluation. Most of them are of a technical nature and serve to further align the system with the new legislative proposals in this area, while not presenting a significant economic, social or fundamental rights impact. Therefore a detailed assessment of the impact of these technical improvements is not needed. These changes mainly concern: 1) improvement of data quality; 2) integrating the VISMail functionality into the VIS; 3) centralising the consultation and representation functions; 4) support for facial image recognition or with latent fingerprints and 5) set up of a reporting and statistics engine based on VIS data. The study on all envisaged *technical impacts* resulting from the VIS evaluation was carried out by eu-LISA between October 2016 and July 2017 and its input was factored into this impact assessment to the extent relevant.

However, several issues identified in that evaluation report require not only a technical analysis, but also a further analysis of relevant impacts. There are **four** such **key issues**:

1. the experienced difficulties to complete procedures to return irregular migrants to their countries of origin in case travel documents are missing;
2. the risks of irregular migration and visa fraud, including in particular for reasons of trafficking in human beings and other abuse involving children<sup>30</sup> under 12 years old when applying for a visa;
3. the difficulties regarding the verification of long stay visas and residence documents and their holders, by border or migration authorities;
4. the information gap on checks for irregular migration and security risks when processing visa applications.

In order to analyse them two studies were contracted. The first one addressed aspects 1 and 2 and the second one aspect 3. In addition, it also seems necessary to update the VIS to take into account the evolution that took place after the 2016 evaluation regarding EU information systems for border management and security. Therefore, in striving to align the initiative with the recently adopted (EES), proposed (recast Eurodac proposal, ETIAS, interoperability) or envisaged Commission proposals (ECRIS-TCN<sup>31</sup>), a possibility to

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30 Apart from child trafficking, child protection phenomena also encompass other violations which could be addressed under this section, such as children in possession of a visa subsequently gone missing, parental child abduction etc. Due to the very nature of these phenomena, available data is very scarce, therefore as a methodological strategy the study exclusively focused on trafficking as the phenomenon most feasible to quantify.

31 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a centralised system for the identification of Member States holding conviction information on third country

enable *automatic consultation* of the other existing databases in the area of security and borders for visa processing was raised, which is further analysed as problem 4. The analysis builds upon the findings of ETIAS feasibility study, therefore no new studies were contracted.

## **2. PROBLEM DEFINITION**

### **2.1. What are the problems?**

#### **2.1.1. Lack of travel document as evidence in return proceedings**

Currently Member States have different national practices regarding the storing the travel document presented when applying for a short-stay visa. Many of them require applicants to submit hard copies of the bio data page (as a minimum) of the document, which are then archived for an average period of 1-3 years in the consulates' archives. However, national authorities have no information regarding the existence of those copies kept by other Member States and there are no EU-wide rules regulating their exchange. In the absence of a valid travel document (or copy thereof), return proceedings for TCNs irregularly found on EU territory and who entered the EU using a visa are slow and often unsuccessful.

The common EU rules governing return proceedings are stipulated in the Return Directive<sup>32</sup>, which contains clear, transparent and common rules for the return and removal of the irregularly staying migrants, while fully respecting the human rights and fundamental freedoms of the persons concerned.

In the wake of the migration crisis of 2015, the numbers of irregular migrants in the EU expected to return to their home country has grown considerably. In the six-year period of 2011-2016, 2 891 260 persons were ordered to leave, out of which 1 118 385 were returned to third countries. This means that 1 772 875 persons were not returned, out of which 600 925 in 2015-2016 alone. It can be assumed that the majority of these persons remain in the territory of the EU Member States.<sup>33</sup> Irregular migrants staying in the territory of the Member States and waiting for return to their home country cause high costs for Member States in terms of housing, food, medical expenses and related expenses, as well as administrative costs, hampering in addition fast and effective procedures for legal migration and asylum seekers. The failure to efficiently return migrants to their home country is also an incentive for further irregular migration. The dangers along the road to Europe are often disregarded by irregular migrants because they know that the risk of being returned once in Europe is relatively low. The proposal to amend the Visa Code has also pursued options on how to better link visa policy and return.

Among third country nationals (TCN) to be returned, there is a number of TCN who overstayed their visa and became subject to return procedures. The total number of

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nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011.

32 Directive 2008/115/EC of the Council and the European parliament on common standards and procedures in Member States for returning illegally staying third-country nationals.

33 Eurostat: Third-country nationals ordered to leave – annual data (rounded); Third-country nationals returned following an order to leave – annual data (rounded).

detected overstayers at EU-level is estimated at around 294 000 cases across the EU, on average.<sup>34</sup>

#### *Visa overstayers who no longer possess a travel document*

Based on the data provided by the Member States, it is estimated that roughly 10 to 20% of all visa overstayer return cases involve TCN visa holders who no longer possess, or fail to produce their travel document on request. This amounts to an estimated 26 445 – 52 891 cases of missing travel documents (as of December 2017).

Stakeholder testimony<sup>35</sup> further suggests that a significant number of return decisions are not executed due the authorities' inability to obtain satisfactory evidence proving the nationality of the third country national in question. If it is estimated that between 60% to 75% of such return cases are not implemented on these grounds. This amounts to an estimated 15 867 to 39 668 returns of visa overstayers that could not be executed, which represents a high administrative burden for Member States.<sup>36</sup>

The 2016 VIS evaluation revealed that 8 out of 26 Member States had never even accessed the VIS for the purpose of identifying TCN for return. Furthermore, 3 out of the 19 responding Member States declared that they communicated VIS data to non-EU countries or international organisations for the purpose of return. It has to be noted that non-EU countries usually do not accept information extracted from VIS as *prima facie* evidence of nationality for return purposes. Recent trends<sup>37</sup> showed an increased use of the VIS as an instrument which provides a proof of identity necessary in a return procedure. However, there is currently no mechanism in place to mutually inform and to exchange travel document copies of TCN between Member States, when needed to complete a return procedure in cases where the Member State which has to execute the return is different from the Member State which issued the visa. The absence of such a mechanism means that Member States have *both practical and legal* difficulties when exchanging travel document copies to this end.

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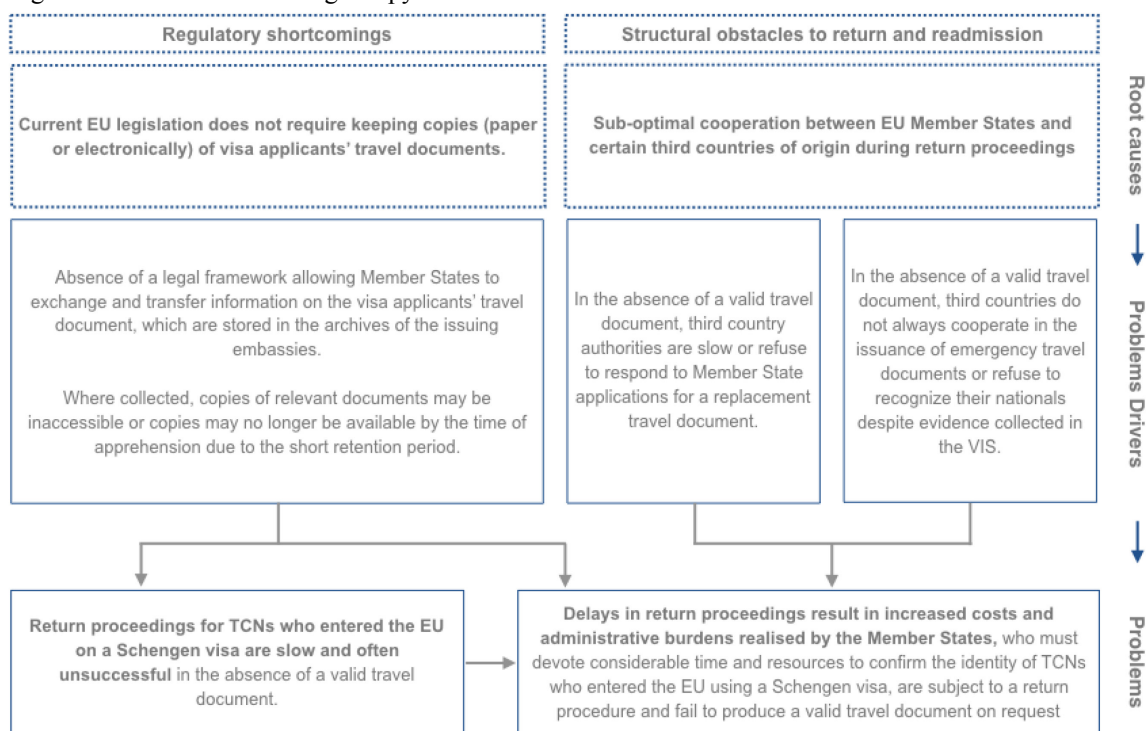
34 Supporting study by Ecorys: Feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicants' travel document in VIS, based on 2014 – 2016 average data. It is worth noting that the figure is in line with the figure on visa overstayers that was used in the 2016 Impact Assessment report on the introduction of an Entry-Exit System, which estimated a stable annual average of approximately 250.000 visa overstayers EU-wide - SWD(2016) 115 final.

35 Targeted stakeholder consultations conducted in the scope of the Ecorys study.

36 Calculations within the Ecorys study estimate additional annual costs of EUR up to 33.3m. For more see Annex II to the study.

37 [COM\(2016\) 655 final](#). "Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT Evaluation," Brussels: 14 October 2016.

Figure 2: Problem tree: storing a copy of the travel document in the VIS



Difficulties faced by Member States to acquire a copy of the travel document from the diplomatic/consular representations of the issuing countries places a high burden on them as they have to devote considerable time and resources to confirm the identity and nationality of a TCN.<sup>38</sup> Not having a copy of the travel document means that it is disproportionately difficult to carry out the return of TCNs issued return decisions in practice. In this way, lack of travel document copies in VIS undermines the smooth functioning of the EU return policy and, due to its role to prevent and respond to the risk of irregular migration, indirectly also on the visa policy.

### 2.1.2. Lack of fingerprinting data allowing to identify minors

Current EU legislation on the visa application procedure for short-stay visas exempts children under the age of 12 from providing fingerprints. This was mainly due to technical limitations regarding fingerprinting children available at the time the provisions were set in law.<sup>39</sup> However, the legislator requested the Commission in Article 57(4) of the Visa Code to address in the future the issue of sufficient reliability for identification and verification purposes of fingerprints of children under the age of 12. Without fingerprints it is more difficult to unambiguously verify the identity of a child holding a visa at the border or within the Schengen territory. This phenomenon is exponentially amplified by the fact that a Schengen visa can go up to 5 years validity, which means that a child who applied with 12 years old can obtain a multiple entry visa with validity until the age of 17. On average, children under 12 make up 10 to 15 % of visa applicants<sup>40</sup>, meaning that between 1.4 and

38 According to the stakeholders consulted in the scope of the Ecorys study, the return procedure may be delayed by 2 days during low-seasons, and up to 2 weeks during busier periods which brings additional annual costs of up to EUR 12.7m. For detailed calculation see Annex II to the study.

39 Taking into account technologies available at the time, 12 years old was considered to be a reasonable minimum age for automated fingerprint recognition.

40 For more details on the estimate methodology see Ecorys study, Chapter 4.1.2., p.109.

2.1 million new visas are granted to children under 12 each year. Out of this category, it is estimated that between 0.7 and 1.05 million are children younger than 6 years.

On the other hand, based on available data<sup>41</sup>, it is estimated that on a yearly basis there could be between 1 500 and 2 000 TCN children <12 victim of trafficking in the Schengen area. Although there is no precise information possible on how many of these child trafficking victims have travelled with a visa to the Schengen area or come from countries subject to the visa obligation (but have tried and failed to obtain such a visa), extrapolations can be made on the basis of information available regarding the main countries of origin<sup>42</sup> of the trafficked children according to which it is likely that around 25 % of them went through the visa process (375-500 children on a yearly basis<sup>43</sup>). Furthermore, a multiplying factor should be taken into account, given that with a MEV valid for up to 5 years, the real scope of the problem is extended potentially to children up to 17 years old. For this age group figures on children victims of trafficking climb up to 3200-4250<sup>44</sup> on a yearly basis. Taking all these factors into considerations, it can be estimated that between 820-1000 trafficked children arrive with a visa which was taken without fingerprints each year.

The Commission Report on the progress made in the fight against trafficking in human underlined that traffickers exploit loopholes in enforcement or control and that tools, such as the VIS can assist in identifying victims of trafficking in human beings and detecting traffickers. *“When a person regularly requests a new visa or has been issued with a multiple-entry visa and is travelling repeatedly with different 'other' persons (for example other children), there could be a suspicion of trafficking. The biometric data in the VIS makes it furthermore impossible for multiple persons (looking alike) to travel on the same visa or passport.”*<sup>45</sup>

*A typical case scenario of trafficking would entail a family with children applying for a Schengen visa. A photo of the child (which does not have to be taken live) must be presented with the application. The child may or may not be present, although the family would have to present a breeder document<sup>46</sup> (e.g. birth certificate) proving the relation between the child and the adult applicant(s). If a visa is issued (which could be valid for up to 5 years), the family does not have to appear again in the consulate for the period during which the visa is valid, and multiple travels to the EU are possible. Verification that the children travelling with the family are the rightful holders of the visas are done at the border only on the basis of visual inspection of the travel document, by checking that the child in front of the border guard resembles to a reasonable degree to the child in the*

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41 Idem.

42 According to Commission's Report to the European Parliament and the Council on the progress made in the fight against trafficking in human beings, SWD(2016) 159 final Nigeria, China, Albania, Vietnam and Morocco are the top 5 source countries for trafficked TCN children.

43 Source: Eurostat data on trafficked children.

44 According to figures from [Eurostat Report on Trafficking in Human Beings](#), 2% of victims of trafficking are under 12, whereas 17% are in the 12-17 age range. Using the same extrapolation logic, the number of potential victims of trafficking is substantially higher if this age range is taken into consideration.

45 Commission Report to the European Parliament and the Council on the progress made in the fight against trafficking in human beings, SWD(2016) 159 final.

46 Abundant evidence has been gathered by the Commission from Scheval Report and Local Schengen Cooperation Reports, in particular from sub-Saharan Africa, on false applications involving fraudulent breeder document and the low reliability of breeder documents issued in many third countries subject to visa obligation.

*passport in which the visa is affixed. Thus, while the travel document could be genuine and the visa genuinely obtained, a trafficker could travel multiple times bringing different children to EU territory without being detected at borders.*

*In case the child is later on found by authorities as a victim of trafficking, it would be impossible to retrieve the information regarding the true identity, country of origin and real family of the child, since identifications against the VIS (or other systems) are not possible on the basis of facial image only, especially when the facial image initially stored in the system is based on a scanned photograph.*

*As regards missing children (i.e. in case of a genuine family arriving as bona fide travellers but where the child, for various reasons, might go missing during the stay in the territory), the search, although legally possible through SIS alerts<sup>47</sup> on missing persons, is not effective in practice because only alpha-numeric identity data could be included in the alert (name, surname, place and date of birth, nationality<sup>48</sup>), and which, depending also on the age and maturity of the child, would not be sufficient to allow identifying the child in case found by the authorities.*

Due to the lack of fingerprints for TCN children under 12, VIS benefits to prevent visa fraud and facilitate checks at external borders and within the territory of the Member States or asylum examination do not extend to all children. This is a loophole which can be used by fraudsters and traffickers and does not contribute to ensure the protection of TCN (<12 years of age at the time of applying for a visa) children at risk of abuse, either from trafficking with the help of a visa, or in case they are found in Schengen territory in a situation where their rights may be or have been violated (through trafficking, missing children, unaccompanied minors applying for asylum).

### **2.1.3. Lack of sufficient information on long-stay visas and residence documents**

The issuance of long stay visas and residence documents is not fully harmonised at EU level, since only for certain categories of third-country nationals admission conditions and procedures are regulated under EU law.<sup>49</sup> Such authorisations give the right to the holder to stay and move freely within the entire Schengen territory for 90 days in any 180-day period<sup>50</sup>, provided they fulfil the entry conditions set out in the Schengen Border Code. Residence documents include residence permits<sup>51</sup> – issued to third country nationals for stays longer than 90 days in 180 days for reasons varying from study, research, work, to family reunification by third country nationals, and residence cards<sup>52</sup> – issued to third country nationals who are family members of mobile EU citizens (i.e. those who have exercised the right to free movement).

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47 By April 2018, nearly 70,000 missing children were reported in the SIS (although it is impossible to know the nationality, whether EU or TCN).

48 Pursuant to Article 20(3) of Regulation (EU) No 515/2014.

49 This is the case in respect of rules on family reunification, long term residence, for the admission of seasonal and highly skilled workers, Intra-Corporate Transferees, students, researchers and trainees with university degrees. For more information, [see the dedicated site](#).

50 Article 21 Schengen Convention provides the mutual recognition of these documents as documents allowing free movement within the Schengen area for 90 days in any 180 days (i.e. similar to a Schengen short-stay visa).

51 As defined under Article 2(16) of Regulation 399/2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

52 Issued under Article 21 TFEU, concerning the freedom of movement of EU citizens. Mobile citizens are those EU citizens who are residing in another EU member state than their own.

Currently, only TCN who applied for short-stay visas are in the VIS, as it is a centralised mechanism at EU level containing short-stay visa applications and visas issued. Long-stay visas, residence permits are residence cards are not contained in any EU system.

The lack of a centralised mechanism at EU level enabling Member States to exchange information on these documents and their applicants or holders result in a two-fold problem:

1. authorities at borders others than of the Member State who issued a document have difficulties to effectively and efficiently verify the authenticity of these documents in connection with their rightful owner, or to fully ascertain the identity of the person holding them. Identity and document fraud are the major risks in this respect (as elaborated further down).
2. Member States do not have access to nor can exchange, in an effective and efficient manner, information enabling them to properly check whether the person is not a threat to the security of the Member States before or when the person reaches the external border (see further below).

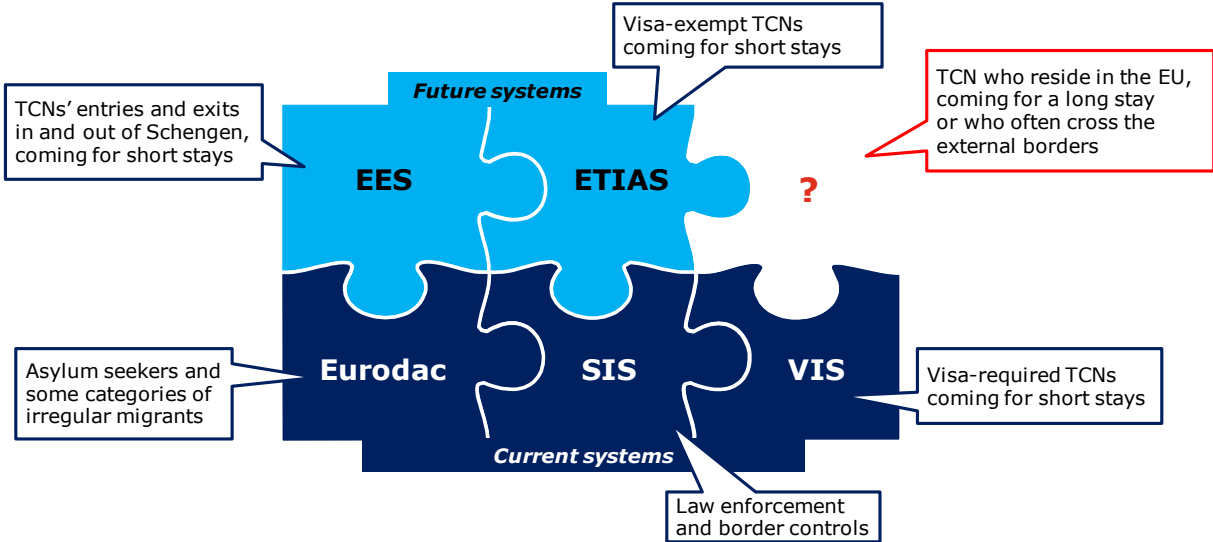


Figure 3: Information gap on a category of third-country nationals

From a **border-control point of view and for checks carried out within the territory** of the Member States, it is crucial to be able to ascertain the authenticity and validity of the documents and the legitimate relation with the holder. Currently, this is done, for the documents provided with security features, by verifying these elements. Of the three types of documents (long-stay visas, residence permits, residence cards), only some residence permits and residence cards issued in a residence permit format have a chip<sup>53</sup>, which allows electronic verification and the possibility to verify the bearer identity<sup>54</sup>. Frontex observes that both the quantity and quality of fraudulent residence documents (2546

53 The check that the residence permit belongs to the bearer is done by reading the facial image from the chip of the document and comparing it with the one of the bearer. In case of failure or doubt, the stored fingerprints can be accessed. However, the information on the chip needs to be checked on its authenticity which can be done by exchanging cryptographic certificates between Member States.

54 However, to achieve a high level of security of checks, MS would need to systematically exchange the Country Verifying Certificate Authorities (CVCA), which currently is only partially done. Furthermore, there is no evidence showing that Member States use the fingerprints stored in the residence permits issued by another Member State to carry out identity verification at borders.

detections in 2017 on both permits and cards) circulating in the EU have increased in recent years.

Moreover, an unsuccessful document authentication procedure based exclusively on verifying the security features of the document does not automatically establish a fraud case, and because it implies further second line checks, does not help to carry out a smooth and fast border check procedure.

In addition, while many residence permits and long-stay visas formats are harmonised, and for the residence cards measures to harmonise and secure them are under way<sup>55</sup>, this is not yet the case for all these documents. Thus, the visual inspection of the document's security features is made difficult by the different formats and – for some documents – the rarity with which they appear at certain border-crossing points, in addition to the heterogeneous use of security features.

The border guards have different tools to gather information to assess the validity of a document, some automated (SIS and SLTD for lost, stolen, misappropriated and invalidated documents), others to be used at second-line border checks (like the FADO<sup>56</sup> for images of authentic and forged documents). However, the information provided by these systems is very limited and the objective of border checks cannot be achieved on this basis in an efficient and effective manner. The SIS (which is the only EU centralised databased used at borders) does not provide information on previous fraud attempt(s) by an applicant and cannot provide information on documents that have not been reported as stolen or lost, it does not include information on withdrawn documents, nor any information on long stay visas.

In case of a doubt concerning the document or its holder, border guards have to rely on bilateral contacts with the issuing Member States, via communication channels like SIRENE<sup>57</sup>, the Police and Customs Cooperation Centres National Contact Centre (NCC), phone, emails or fax<sup>58</sup>, which is limited by inherent constraints like language barriers and waiting times for the traveller,<sup>59</sup> who sometimes runs the risk of being wrongly denied entry or passage.

Moreover, the issuance of a residence document constitutes the enactment of a right established under legal migration or freedom of movement legislation to enter and stay on the territory of the Member States. The document is thus also a material proof that the right exists, but it is not to be confused with the right. A person may lose the document or the document may expire (as it is the case with the validity of a residence card), but this is not equivalent to the holder losing the right enacted by that document. However, in case of

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55 The European Commission 2018 Work Programme includes the legislative initiative to harmonise and secure the residence documents. The idea of such harmonisation is considered both in the contracted study and in this report as covered by option (3.2) "Further harmonise and secure long-stay visas and residence documents". COM(2018) 212 final, 17 April 2018.

56 The FADO is a public register of images of typical authentic or forged travel and identity documents as well as information on security and forgery techniques that Member States can check online.

57 Which is limited to providing supplementary information in case of a SIS alert.

58 In the questionnaire of the 2017 *Feasibility Study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits - Phase I: Analysis of Options*, 2017, Member States explained that these procedures are used after an examination of the security features of the document at second-line border check.

59 For illustration purposes, an example from the public consultation can be given where a TCN described the embarrassing experience of how their residence document was called into question by suspicious border guards on the count of never having encountered such document before.

expiry, loss or theft, the person cannot prove its right to enter, stay or move freely within the territory of the Member States, and currently existing systems to be checked at borders and within the territory cannot provide evidence to support the person ascertain its rights in such cases.

Ultimately, this situation leads to **inefficient border-crossing procedures**, which are not in the spirit of freedom of movement of bona fide TCN who have a right to enter and reside in the territory of a Member State (Article 21 of TFEU and Directive 2004/38). Consulted Member States<sup>60</sup> complained about these procedures as being time-consuming and inefficient. For the large majority (80%) the lack of shared information on these documents was a hurdle to their day-to day activities and as such **creates administrative burden**.

The absolute majority of respondents to the open public consultation also perceive the identified information gap as leading to problems in the management of external borders and irregular migration within the EU<sup>61</sup>. The lack of centralised storage of data on these documents renders them more likely to be tampered with, thus more susceptible to being misused. In order to be able to assess whether the person could pose a **threat to the security of the Member States** or whether he or she could be an identity fraudster, it is important to have access to relevant information on the previous applications made by that person and which were rejected by other Member States on grounds of national security or because of established fraudulent claims (of identity or documents). When a TCN applies for a short stay visa, a full picture of the history of movements, enabling to assess security and migration risks, including fraud, is possible by connecting information from either VIS or (in the future) ETIAS with EES, ETIAS, Eurodac and VIS. However, there is no similar possibility if the same TCN applies for a long stay document, as this information is not connected with any central system. Information is not flowing either from the short stay history of a person into a long stay assessment, nor vice versa. Apart from checking national systems, the only EU-level exchange of information migration authorities have at their disposal is the SIS for alerts on entry bans. There is no tool to share information on applications and reasons for refusal for long stay applicants, which might lead to identity fraud or security risks. This also affects negatively the efficiency of checks against the integrated IT systems for borders, i.e. checks against the border and security systems using interoperability is not possible if the information on the document is not present in at least one of these systems.

Criminals are taking advantage of this loophole in the information exchange between Member States. Consultations with Europol and national law enforcement authorities revealed that due to the lack of information sharing between Member States on long stay documents, combined with the lack of checks between the various centralised systems, the exact size of the security risk posed by TCN holders of long stay visas or residence documents is difficult to measure. However, individual national authorities provided

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60 Member States were consulted as part of the supporting study carried out by PwC, see the Executive Summary, Annex 9.

61 Open public consultation on sharing information at EU level on long-stay visas and residence document feedback (see Annex 2).

information<sup>62</sup> on cases involving serious criminality by TCN going through various legal migration/asylum/residence statuses in the territories of Member States, which indicate that the phenomenon is real and raises serious concerns<sup>63</sup>.

*Stakeholder testimony:*

*In one such case<sup>64</sup> a TCN applied for asylum in Austria. His claim was rejected and he received an entry ban (recorded in the SIS) after several convictions for drug dealing and serious property crimes in Austria and other Member States. His biometrics and DNA were recorded by the Austrian police on that occasion. Three years later a DNA hit against his data was obtained in a rape case and a European Arrest Warrant, registered in the SIS, was issued on his name.*

*The same TCN, under a different identity, applied for and successfully obtained a Schengen visa from another Member State, with the help of which he travelled regularly from Nigeria to the EU territory. Since SIS, VIS and Eurodac are not currently interoperable and checks are not systematically launched to the other IT systems when a visa application is lodged, the identity fraud could not be detected and the visa was issued, although an arrest warrant was present in the SIS.*

*Later on the TCN married an Austrian national and obtained a residence permit on the basis of his status as family member of an EU national. The residence document was issued without problems as there are no compulsory checks against EU databases as part of the issuance procedure for these documents.*

*The TCN was finally apprehended by the Austrian police when he was reported by his wife for aggravated domestic violence. Based on fingerprints taken at that time and checked against the Austrian police files, the link with the previous entry ban and arrest warrant issued years before could finally be established.*

In addition to the two main problems identified above, this information gap<sup>65</sup> and the persisting fraud problem that comes with it can create spill over effects in the form of blind spots in the border-management security framework, thus ultimately creating increased risks for internal security and irregular migration. According to Frontex's 2017 Annual Risk Analysis<sup>66</sup>, smugglers frequently provide migrants with fraudulent travel and identity documents. Fraud is used by organised crime as a means for a series of related serious

62 See Annex 2: Stakeholder consultation.

63 See also the phenomenon of [marriages of convenience](#). Available statistics support the fact that marriages of convenience do occur, but it is not yet possible to fully quantify this across all (Member) States and certainly not in a comparable manner. In 2010, the EU-27 total of permits issued for family reasons was 747 785, some 510 305 (or 68.2% of the total) of which were issued to a third-country national joining with a third-country national. With regard to the identified cases of marriages of convenience, and noting that in many cases no distinction between those occurring between third-country nationals and those occurring between a third-country and an EU national was possible, residence permits refused or revoked by a (Member) State ranged, in 2011, from 5 up to 990, and in 2010 again from 5 up to 1 360. In terms of marriages of convenience detected in other ways by a (Member) State, this varied, in 2011, from 5 to 130 and, in 2010, from again 5 up to 425. Suspected marriages of convenience in a (Member) State ranged in 2011 from 1 740 down to 35 ([Misuse of the Right to Family Reunification](#), European Migration Network, 2012).

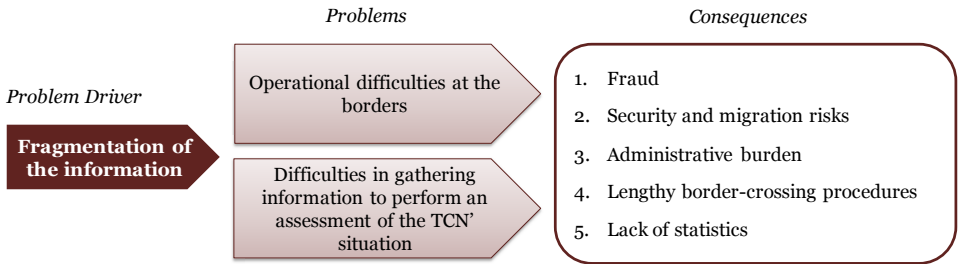
64 Source: Ministry of Interior – Criminal Intelligence Service, Austria.

65 Currently, Member States can use alerts stored in the Schengen Information System (SIS) to inform other Member States of lost, stolen, misappropriated or invalidated residence documents and the European Image Archiving System (FADO) to detect counterfeit documents at the borders. However, these systems do not constitute a positive list of issued documents.

66 [Risk Analysis for 2017](#), Frontex, page 22.

offences, notably for terrorism, trafficking in human beings, migrant smuggling or drug<sup>67</sup> and firearm trafficking<sup>68</sup>. Smugglers are supported by criminal networks with access to expert counterfeiters who, financed by the strong demand, have set up print shops.

Figure 4: Problem tree – long stay documents



Finally, this gap also entails costs for the society as people obtaining residency through fraudulent means make wrongful use of social security benefits or gain unjustified access to the labour market.

**2.1.4. Lack of sufficient checks on migration and security risks when processing visa applications**

Currently the visa procedure is not taking into account the possibilities offered by available large-scale IT systems nor interoperability between them. For instance, when assessing a visa application, SIS is checked as part of the risk assessment for irregular migration pursuant to the Visa Code. However, only the checks against alerts for the purpose of refusing entry are currently done because this is an automatic ground for refusal under the Visa Code. In practice, Member States' implementation of SIS and other national databases checks depend on the technical availability and national arrangements in any case, varying from direct access to SIS in consulates to consultations of national police authorities, who themselves carry out a number of checks for migration or security risks purposes, including larger checks against SIS categories, as well as SLTD, TDAWN, as well as a number of national migration and security databases. However this remains in all cases a manual non-automated operation.

This leads to different checks carried out by each Member State, which creates an uneven playing field for visa applicants who are subject to more or less stringent checks, depending on each Member State and consequently could lead to undetected security risks and granting a right to enter the territory to (see case on page 21 also relevant for this problem).

This problem is worsened by the fact that in some third countries e.g. West Balkan, Caucasus countries but also in some EU countries the legal change of personal data, either family or first names, is rather easy and cheap administrative procedure. International criminals convicted or wanted for arrest in EU can change their names and get new identities. It is therefore cheaper for them to legally change identity than to use alias identities and forged documents. They can obtain genuine biometric travel documents,

67 See [Eures-Crim projet](#) (for instance a drug criminal network of TCN with Spanish residence permits operating in Belgium).  
 68 Communication from the Commission to the European Parliament and the Council on an “Action Plan To Strengthen The European Response To Travel Document Fraud” of December 2016.

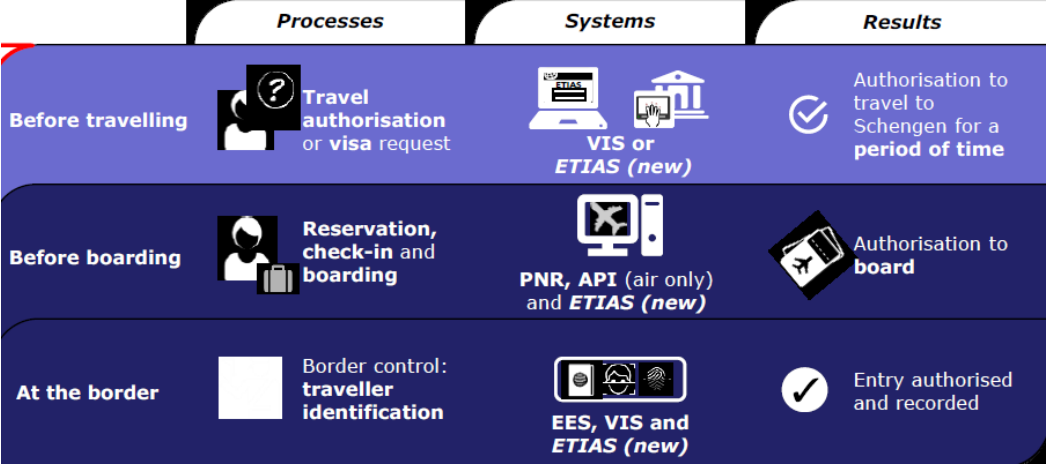
which do not yield any hit against previously known identities for irregular migration or criminal acts carried out with alpha-numeric data only.

Furthermore, this situation does not ensure the same minimum level of checks against large-scale databases in the field of border and security to which visa free TCNs – who in principle pose lower risks in terms of security or irregular migration – will be submitted through ETIAS<sup>69</sup>, nor those to which EU nationals are currently subject when crossing an external border<sup>70</sup>, both at entry and exit.

Moreover, the current system of checks during the visa examination is no longer adequate for the new layered border management strategy comprising a number of large-scale IT systems, as illustrated in Figure 5, which depicts the role that different IT systems currently have for visa-required (VIS) and visa-exempt travellers (ETIAS), in combination with the upcoming EES, as part of EU integrated border management.

Not having the possibility of direct, seamless and efficient checks of other databases adds to the burden of visa application processing, making it more cumbersome. In this way it is hampering the functioning of the common visa policy.

Figure 5: Place of VIS in the EU layered border management strategy



69 Article 18 of the proposal for ETIAS Regulation (see footnote 7) provides for the automated processing of all applications for an ETIAS authorisation against all centralised databases mentioned under the current measure. Article 28 of the same proposal provides for screening rules along similar conditions as those provided under the current measure, although tailored for the particular situation of visa free TCN.

70 As of 7 April 2017 systematic checks against relevant databases are carried out on all EU citizens who are crossing the EU's external borders (<http://www.consilium.europa.eu/en/press/press-releases/2017/03/07/regulation-reinforce-checks-external-borders/>)

## 2.2. What are the problem drivers?

### 2.2.1. Lack of travel document as evidence in return proceedings

Two main drivers were identified in the course of the study.

- *Driver 1: The absence of a legal framework allowing Member States to exchange/transfer information on travel documents of TCN subject to return.*

Currently, EU legislation – including in the areas of visa policy and migration – does not provide for the storage of digital copies (i.e. scanned pages) of the visa applicants' travel document in a centralised European system, nor for making them available to other Member States. Member States may, however, establish such an obligation in their national legislation.<sup>71</sup> In practice, many Member States systematically require applicants to submit such copies of the bio data page (as a minimum), which are stored in paper or digital format by the individual Member States (i.e. there is no central storage of travel documents associated to the visa).

- *Driver 2: Insufficient (or non-existent) and/or slow cooperation of third countries in return procedures in the absence of a (copy of) the travel document.*

The consensus view among consulted stakeholders is that the degree to which third countries cooperate in this field is critically dependent on the quality of relations between the third country and the returning Member State, or the EU more broadly. Bilateral return agreements between Member States and countries of origin and EU readmission agreements (EURAs) are one of the tools that can be used to ensure cooperation with countries of origin for the effective and smooth implementation of return decisions. However, even in the context of EURAs and bilateral readmission agreements, Member States face practical challenges to their implementation in the absence of valid travel documents which can prove the nationality of the person to be returned.<sup>72</sup> In particular, Member States have reported that third countries often do not issue travel documents to enable the readmission / return, do not reply within deadlines or they require different levels of evidence to confirm a person without travel documents as their national.<sup>73</sup>

### 2.2.2. Lack of fingerprinting data allowing to identify minors

The lack of a legal basis allowing to collect fingerprints from children under 12 and check with these data was identified as the main driver behind this problem. Competent authorities are having difficulty to identify or verify the identity of some of the third country nationals below 17 who enter or try to enter the EU territory using a short stay visa because the EU legal framework does not allow for collecting fingerprints for TCN visa applicants under 12.

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71 Only three Member States were identified as not having formulated the obligation (within the Ecorys study stakeholders consultation).

72 European Migration Network, Synthesis Report for the EMN Focussed Study 2014 – Good practices in the return and reintegration of irregular migrants: Member States' entry bans policy and use of readmission agreements between Member States and third countries, 2014.

73 Ibid. See also the national reports of Austria and Greece in support of the EMN 2014 study: "Austria's return policy: application of entry bans policy and use of readmission agreements," p. 52; "EMN Readmission Report Greece," p.21, amongst others.

The inclusion of biometric identifiers, comprising the facial image and ten fingerprints in the VIS is provided for in Article 13(2) of the Visa Code. However, children under 12 are exempt from this obligation to have their fingerprints taken. Therefore, competent authorities have difficulties to identify and/or verify the identity of third country nationals under the age of 17 (taking into account the possible 5-year validity of the visa) who enter or have tried to enter the EU using a visa. Current legislative framework does not correspond to the technological progress either – taking fingerprints of children under 12 was not technically feasible at the time of the adoption of the original VIS legal act, as will be demonstrated later when presenting the rationale for policy options.

### **2.2.3. Lack of sufficient information on long-stay visas and residence documents**

The identified problem driver has to do with the lack of and fragmentation of the information on long-stay and residence documents.

Data on long-stay visas and residence documents are kept at national level. They allow border guards to check the information on a document presented against these systems and a match occurs when the document is valid and issued by the same Member State. However, border guards and migration authorities have no fast and systematic access to information on documents issued by another Member State. The available data is partial and scattered in different systems and tools (SIS, SLTD, FADO, bilateral contacts between Member States etc.) which leads to lengthy procedures to collect all the necessary data for the day-to-day activities of national authorities. Member States and the respondents to the public consultation<sup>74</sup> confirmed this: 86% agreed with the identified information gap that leads to problems in management of external borders and irregular migration within the EU.

### **2.2.4. Lack of sufficient checks on migration and security risks when processing visa applications**

The problem stems from the changed security and migratory context, legislative developments, such as ETIAS and new technical feasibility stemming from interoperability. Furthermore, the outcome of the Schengen evaluation shows that Member States would welcome the security cross-check against other applications as a way of enhancing security. This also leads to difficulties when assessing irregular migration and security risk in the process of issuing short-term visas. It also leads to less stringent, less harmonised and less evidence-based assessment of these risks because of the impossibility to use automated database-searching.

## **2.3. How will the problem evolve?**

### **2.3.1. Lack of travel document as evidence in return proceedings**

Return of a TCN to the country of origin or to another country of transit requires an individual assessment of the person's situation and in particular an unequivocal establishment of his nationality. In the absence of solid proof such as a travel document,

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<sup>74</sup> Open public consultation on sharing information at EU level on long-stay visas and residence documents feedback (see Annex 2).

third country authorities are usually unwilling to confirm that a TCN subject to return is their national, which further hampers cooperation in return procedures. As regards TCN subject to a visa, their identity and nationality could currently be established on the basis of a biometric match against the VIS, which is however not an acceptable evidence for third countries. These two factors: no systematic obligation for storage and the unwillingness of third countries to accept VIS data instead of copy of travel document lead to the problem of difficult returns and accrued additional costs. This, in turn, leads to hampering of the return and indirectly of the common visa policy.

Based on forecast data on future trends in visa applications, it is estimated that, in the absence of further action at EU level, the proportion of visa overstayers in 2019 will increase to more than 350 000, between 30 000 to 60 000 of which will find themselves in return proceedings without valid travel documents.<sup>75</sup> It can be assumed that the political pressure to enforce return decisions will grow accordingly.

### **2.3.2. Lack of fingerprinting data allowing to identify minors**

In the continuous absence of fingerprinting from the visa application procedure and consequently of the means to verify the identity of a TCN child going up to the age of 17 years, the identified problems will continue and might even grow, as networks of irregular migration and trafficking could become increasingly aware of the existing gap and would try to exploit it.

As organised criminal networks are increasingly professionalising and modernising their *modus operandi* and there are no indications of a reversal in migration trends<sup>76</sup>, the number of children that are at risk of being trafficked will probably remain high or even increase. Under the assumption of the continuation of the current scenario, it is expected that the trafficking of TCN children (<17 and who therefore potentially entered with a visa obtained without fingerprints, thus making their subsequent identification nearly impossible) into the EU using genuine visas will remain high – or may even rise further due to the increasing number of applications and the involvement of organised criminal networks, which are becoming more professional.<sup>77</sup>

### **2.3.3. Lack of sufficient information on long-stay visas and residence documents**

The risks for internal security and irregular migration created by the information gap regarding long stay visas and residence documents may increase with the existing and ongoing strengthening of border checks for other categories of travellers (e.g. ETIAS for short-stay visa-exempt travellers and EES for all short stay visitors, combined with the existing VIS for short-stay visa holders). This has an impact on overall security and safety of the Schengen Area, as well as the freedom of movement. These developments could motivate irregular travellers to look for other, less secure types of documents that would still allow them to enter the Schengen area and move across Member States. This phenomenon has already been observed with ID cards, whereby fraudsters target less

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<sup>75</sup> For more information see Chapter 3.1 of Ecorys study.

<sup>76</sup> [Eurostat reported](#) that 4,7 million immigrants immigrated to one of the EU-28 Member States in 2015. An estimated 2.4 million citizens came from non-member countries, around 19.000 were labelled stateless.

<sup>77</sup> Europol (2016). Situation Report Trafficking in human beings in the EU.

secure EU ID cards for intra-Schengen movements<sup>78</sup> (fraud based on the ‘weakest link’ approach).

#### **2.3.4. Lack of sufficient checks on migration and security risks when processing visa applications**

If all the envisaged proposals are finally adopted and subsequently implemented (EES, ETIAS, interoperability proposal), it would lead to an asymmetric situation where automated checks would be mandatory for visa-free TCN in ETIAS against all EU information systems<sup>79</sup> and other databases<sup>80</sup>, whereas for visa required TCN – who are considered, in general, to pose a higher irregular migration or security risk, which is why they need a visa to enter the EU, there is no possibility of automated checks. This would have an impact on a better assessment of migration and security risks when deciding on an application, and would create a less favourable treatment for visa-free TCN in comparison with TCN under visa obligation, as well as lead to additional administrative burden for Member States when trying to overcome the lack of direct means to properly assess migration and security risks.

### **3. WHY SHOULD THE EU ACT?**

#### **3.1. Legal basis**

The current legal basis of the VIS is provided in Article 77 (2) (a) and (b), Article 87(2)(a) and Article 88(2)(a). Similar to other recent proposals in the area of IT systems for security and borders, Article 16(2) could be added in the revised VIS Regulation, as a horizontal principle. Article 74, and Article 77(2)(c) and (d) of the Treaty on the Functioning of the European Union can be added to the legal basis for amending the VIS Regulation. Article 78(2), and Article 79(2) (c), and (d) correspond to ancillary objectives of the VIS and could also be added.

#### **3.2. Subsidiarity: Necessity of EU action<sup>81</sup>**

The objectives of the revised VIS Regulation, to set up a common system and common procedures for the exchange of visa data between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at EU level. The further improvement of these common procedures and rules on the exchange of data consequently requires EU action.

The problems elaborated in the previous sections are unlikely to disappear in the near future and they are directly related to the current provisions of the VIS. Amendments of the VIS legal framework and related legislation are only possible at EU level. By reason of the scale, effects and impact of the envisaged actions, the fundamental objectives can only be achieved efficiently and systematically at EU level. As regards in particular the copy of the

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<sup>78</sup> [Risk Analysis for 2017](#), Frontex, page 23.

<sup>79</sup> ETIAS Central System, Schengen Information System (SIS), Visa Information System (VIS), Entry/Exit System (EES). Interoperability with Eurodac for the purpose of the automated processing of ETIAS applications against Eurodac is pending adoption of the recast Eurodac proposal.

<sup>80</sup> Europol data, Interpol databases (SLTD, TDAWN).

<sup>81</sup> For more information on this please see relevant section in the executive summaries of supporting studies in Annexes 7, 8 and 9.

travel document and fingerprinting of minors, the subsequent analysis of the option will further demonstrate how non-EU action cannot sufficiently address the problem, as they require a solution through a centralised storage and access to data that none of the MS taken individually can achieve. As regards in particular the problem of long-stay visas and residence documents, more than 90% of the Member States consulted considered necessary an EU legislative response to address the information gap. As regards migration and security checks, it relies by its nature on an immediate access to all other MS information, which can only be achieved through EU action.

The initiative will further develop and improve the rules in the VIS, which implies the highest degree of harmonised rules that cannot be solved by Member States acting alone and can only be addressed at EU level.

### **3.3. Subsidiarity: Added value of EU action<sup>82</sup>**

As described in the baseline scenario(s) below, the continued application of the current legal framework is not going to lead to resolving these problems.

Regarding taking fingerprints for visa applicants under 12, the Member States cannot unilaterally decide on changing the system because the VIS Regulation is already stipulating a number of rules.

National action is possible, and desirable, to try to obtain better cooperation of third countries on matters of return of irregular migrants. Nevertheless, it is unlikely that any such activities will achieve the same effect as making the travel document available in VIS for duly justified purposes.

Regarding long-stay visas and residence documents, it is unlikely that national action would address the problem; Member States could act on an individual basis, by strengthening their documents, their issuance process, document checks at border-crossing points or by reinforcing or systematising bilateral cooperation. However, this approach has inherent limitations, as will be explained further below.

Regarding automated checks of other databases, Member States are free to develop solutions to consult both their national, as well as EU and international databases. However, harmonising those rules at EU level seems preferable in order to enable Member States to apply the common Schengen rules in a coordinated way.

## **4. OBJECTIVES: WHAT IS TO BE ACHIEVED?**

This section lists the general and specific objectives any initiative should have to address the above-mentioned problems faced by Member States and visa applicants.

### **4.1. General objectives of the revised VIS proposal**

- Contribute to the implementation of the common visa policy;
- Facilitate the checks at EU external borders and the subsequent movement within the area without internal borders;

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<sup>82</sup> For more information on this please see relevant section in the executive summaries of supporting studies in Annexes 7, 8 and 9.

- Improve security within the EU and at its borders;
- Improve the management of the Schengen external border.

## 4.2. Specific objectives

The specific objectives are defined for each area for which problems and problem drivers were described.

### 4.2.1. For copy of the travel document

- Contribute to improving the identification and return of third country nationals that do not, or no longer fulfil the conditions for entry to, or stay on the territory of the Member States in accordance with the Return Directive.
- Improve the efficiency of the VIS for the purposes of facilitating return procedures.

Achieving these objectives would lead to lowering administrative burden for Member States – with positive impacts in terms of cost savings for Member States public authorities (in terms of housing, food, administration and related expenses), better acceptance of the EU migration policy by the European public and a deterrent effect on potential future irregular migrants, thus reinforcing EU common visa policy.

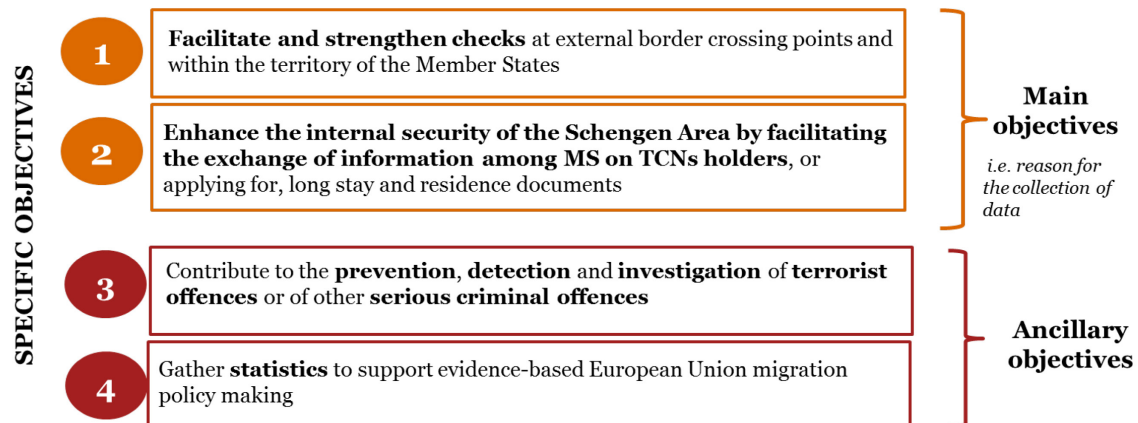
### 4.2.2. For fingerprinting of minors

Two specific objectives are defined:

- Better achieving the VIS objectives in relation to the facilitation of the fight against fraud, facilitation of checks at external border crossing points and facilitation of the application of the Dublin II Regulation.
- Strengthen the prevention and fight against children's rights abuses, such as trafficking, in particular the identification/verification of identity of TCN children who are found in Schengen territory in a situation where their rights may be or have been violated (through trafficking).

### 4.2.3. For long-stay visas and residence documents

Figure 6: Schematic representation of the specific objectives



#### **4.2.4. For migration and security checks**

Making full use of interoperability, granting fast, seamless and systematic access to other IT systems in the area of migration, border management and security would contribute to lowering the burden for Member States and contributing to the objective of a more secure common visa policy by facilitating and improving the assessment of the risk of irregular migration and security in the visa procedure (while following the rules stipulated by the Visa Code).

### **5. WHAT ARE THE AVAILABLE POLICY OPTIONS?**

#### **5.1. What is the baseline from which options are assessed?**

##### *General considerations concerning data protection aspects*

Data protection is closely linked to respect for private and family life protected by Article 7 of the Charter. This is reflected by Article 1(2) of the General Data Protection Regulation<sup>83</sup>, which indicates that the EU protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. It has also to be noted that the Court of Justice of the EU<sup>84</sup> has stated that the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society<sup>85</sup>.

The GDPR, and, where relevant, Directive (EU) 2016/680<sup>86</sup> apply to the processing of personal data carried out for the purpose of processing the visa application by the Member States and by the EU institutions, bodies and agencies involved, respectively.

According to the Commission Communication of July 2010 on information management in the area of freedom, security and justice, data protection rules should be embedded in any new instruments relying on the use of information technology. This implies the inclusion of appropriate provisions limiting data processing to what is necessary for the specific purpose of that instrument and granting data access only to those entities that ‘need to know’. It also implies the choice of appropriate and limited data retention periods depending solely on the objectives of the instrument and the adoption of mechanisms ensuring an accurate risk management and effective protection of the rights of data subjects.

In this respect, the VIS revision is based on data protection by design and by default<sup>86</sup>. The importance of the concepts of data protection by design and by default<sup>87</sup> was repeatedly highlighted by the European Data Protection Supervisor regarding the e-Privacy reform<sup>88</sup>.

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83 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).

84 Court of Justice of the EU, judgment of 9.11.2010, Joined Cases C-92/09 and C-93/09 Volker und Markus Schecke and Eifert [2010] ECR I-0000.

85 In line with Article 52(1) of the Charter, limitations may be imposed on the exercise of the right to data protection as long as the limitations are provided for by law, respect the essence of the right and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

86 In the meaning of Article 25 of the General Data Protection Regulation.

Safeguards are already part of the current VIS setup, namely:

- Data protection is embedded into the design and architecture of the existing VIS and apply to all new functionalities added to it.
- Specified purposes should be clear, limited and relevant to the circumstances (purpose specification); the collection of personal information is limited to that which is necessary for the specified purposes (collection limitation); the collection of personally identifiable information is kept to a strict minimum (data minimisation); the use, retention, and disclosure of personal information is limited to the relevant purposes (use, retention and disclosure limitation).

It is important to note that the safeguards currently present in VIS (baseline scenario) *will also* be part of the revised VIS, for any of the proposed options.

Each of the proposed measures will be assessed against the following three criteria:

- (a) Whether they meet an objective of general interest;
- (b) whether they are necessary;
- (c) If so, whether they are proportional.

When assessing these criteria, a series of principles are taken into account under the terms of the GDPR, including respect of the data minimisation principle (Article 5(1)(c)), according to which access to personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed, data accuracy (Article 5(1)(d)) and purpose limitation (Article 5(1)(b)), according to which data is to be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.

For the purpose of understanding the ensuing data protection considerations, it is important to clarify the scope of current data processing in the VIS:

- the VIS processes and stores data from the application form,<sup>89</sup> which includes biographical information of the person;
- picture
- fingerprints
- decision of Member States on the application, i.e. visa issued, visa refused, visa revoked or annulled.

No information is stored on supporting documents (secure messaging system VISMail is used to exchange additional information, upon request). The **VIS setup already includes a robust set of data protection safeguards**, such as limited and strictly controlled access to the data (Article 6), limited retention period with clear deletion deadlines (Article 23), advanced data deletion in case the data subject has acquired the nationality of a Member State (Article 25), responsibility for the use of data (Article 29), rights to request amendments and deletion of data and obligations for the Member States to do so in case of

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87 A recent Eurobarometer survey showed that almost 90 % of EU citizens indeed agree on the importance of data protection by default settings. TNS Political & Social at the request of the European Commission, 'Flash Eurobarometer 443 — July 2016, 'e-Privacy' Report, EN' (December 2016), at p. 43.

88 European Data Protection Supervisor, Opinion 6/2017, EDPS Opinion on the Proposal for a Regulation on Privacy and Electronic Communications (ePrivacy Regulation).

89 According to Annex I to the Visa Code.

unlawfully or erroneously processing (Articles 24 and 38), strict data security rules (Article 32), strict embargo on transfer to third countries (Article 31) – except for very limited situations in case of return (further explained in section 2.1.1), strict rules on the liability in case of misuse of data (Article 33), detailed rules on keeping of records (Article 34), self-monitoring by Member States (Article 35), cooperation between Member States to ensure the right to data protection of the applicants is upheld (Article 39), right to effective remedy in respect of the personal data (Article 40), as along with a supervisory framework, both by National Supervisory Authorities (Article 41) and by the European Data Protection Supervisor (Article 42).

### **5.1.1. Copy of the travel document**

The current divergent approaches taken by Member States regarding the collection and storage of copies of visa applicants' travel documents during the visa application procedure and the possibility of making them available to other Member States will continue. This would lead to an increased backlog of TCN under return procedure, with increased administrative burden and costs for Member States. The TCN under return procedure will remain in limbo, often in administrative detention. The inefficiency of the return policy will lead more TCN staying irregularly in the territory of the Member States. .

### **5.1.2. Fingerprinting of minors**

Current VIS rules regarding taking fingerprints from children under 12 remain unchanged. Technological progress and available means are not taken into account, while the risk of children right's abuses, such as trafficking of children, remains insufficiently addressed, given the available possibilities. Relevant authorities would continue to have challenges both to identify or verify the identity of young children and to offer appropriate protection if case of suspected trafficking, and to use more effective means enabling to detect and fight against trafficking networks.

### **5.1.3. Long-stay visas and residence documents**

In the current situation Member States do not share information prior to or upon issuance of a long stay document. SIS is the only system required to be checked in respect of a TCN applying for a visa or residence document, but only as regards refusals of entry and stay (i.e. entry bans). However, no means are in place to check whether the holder of the document is not a threat to the security of the Member States other than the one that issued the visa or residence document.

Current inefficient border-crossing procedures will continue. In case of doubt on the document or the bearer (i.e. document unknown to the border guard due to the non-uniform format, expired document, document with non-functioning chip or simply a document holder who lost the document), there are no rapid and effective means at the border to verify the identity of the traveller. This has consequences on the waiting time for the traveller with negative consequences on the right to move freely of bona fide TCN who have a right to enter and reside in the territory of a Member State (Article 21 of TFEU and

Directive 2004/38). Consulted Member States<sup>90</sup> complained about these procedures as being time-consuming and inefficient. For the large majority (80%) the lack of shared information on these documents was a hurdle to their day-to day activities and as such **create administrative burden.**

#### **5.1.4. Migration and security checks**

As regards the assessment of the irregular migration and security risks at the time of application, Member States will continue to rely on national checks and on existing bilateral exchange of information on a case-by-case basis. Member States would still have to check SIS (manually), as there would be no possibility of automated checks and, depending on their national rules, check their national or other international databases. A full assessment of the risks is not possible, which leads to both an uneven playing field for the applicant (i.e. conditions are more or less stringent, depending on the Member State of application) and security gaps are possible, depending on checks carried out by Member States.

## **5.2. Description of the policy options**

### **5.2.1. Copy of the travel document**

Policy options to address the problem of lack of travel documents for return should ensure that the Member States' need for a travel document to certify the identity and nationality of a TCN is covered in each individual case.

- **Option 1.0 – Status quo** – this situation corresponds to the baseline situation described above.
- **Option 1.1 – Include a digital copy of the travel document in the central VIS (centralised)**

Under this option, the digital copy of the visa applicants' travel document would be systematically stored in the VIS system. The competent authorities for identification (and/or verification within the territory) and return – namely migration and return authorities – and which already have access to search the system using the fingerprints of the apprehended TCN, would be able to retrieve this copy, subject to strict access rules.

Article 2(e) of the VIS Regulation foresees that one of the objectives of VIS is 'to 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.' Article 31(2) enables the Member States to transfer or to make available a limited set of these data to a third country for the purpose of proving the identity of third-country nationals for the purpose of return.<sup>91</sup> Thus, although not explicitly defined in Article 2, when taken together, these

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90 Member States were consulted as part of the supporting study carried out by PwC, see the Executive Summary, Annex 9.

91 The Regulation allows the designated competent authorities to transfer the following data from the visa application file: first name, surname and former surname (if applicable); sex, date, place and country of birth; current nationality and nationality at birth; type and number of the travel document, the authority which issued it and the date of issue and of expiry; residence; and in the case of minors, the surname and first name(s) of the applicant's father and mother.

provisions foresee that the VIS can be used to facilitate both the identification of the irregular migrant and the return itself.<sup>92</sup>

- **Option 1.2 – Include a digital copy of the travel document in national visa systems (decentralised)**

Under this option the digital copy would be stored in the national visa systems (NS-VIS) of the Member States with which the application for a visa was lodged. When a VIS hit is obtained in respect of a TCN subject to return procedure, the MS responsible would submit a request to the MS that owns the data. In this scenario, a fast and secure channel of communication must exist between the Member States' authorities allowing them to send the request and receive the information. This channel could be ensured by the existing VISMail facility within the VIS.

In addition to the main options, two additional sub-options were defined regarding the scope of the data to be stored in VIS:

- **Sub-option A – Storage of biographical page only**

This sub-option will involve the incorporation of the standardised MRTD size 3 data page.<sup>93</sup>

- **Sub-option B – Storage of all used pages of the applicant's travel document**

Another approach would be to scan and store a digital copy of all used visa pages of the applicants' travel document, i.e. those containing visa stamps and stickers. Blank pages and any other pages in the TD (i.e. annotations, the back-side of the biographic data page, the page adjacent to the data page) would not be stored in VIS.

The two sub-options can be applied to both Option 1.1 and Option 1.2 described above.

## **5.2.2. Fingerprinting of minors**

Policy options to address this problem should ensure that children having obtained a Schengen visa before they were 12 years old have their verification of identity correctly made at the border or within the territory, or are correctly identified in case found victims of trafficking or other forms of abuse. The reason for taking fingerprints stems from the fact that misidentification is more likely when based exclusively on alphanumeric data. Adding fingerprints to the file reduces the likelihood of misidentification to virtually zero. By storing fingerprints in the VIS the system provides a secure link to the identity to the visa applicant through biometrics. This applies to adults as well as children. Consultations with stakeholders that technological developments, including on the collection and use of biometrics, could contribute and should be used to enhance the protection of children. A majority of the respondents also consider fingerprinting children applying for a short-stay visa necessary or useful to address or prevent trafficking or other forms of abuse<sup>94</sup>.

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92 [EMN Ad-Hoc Query on COM AHQ on Member States' Experiences with the use of the Visa Information System \(VIS\) for Return Purposes](#). Requested by COM on 18th March 2016. 24 responses were provided

93 According to ICAO standards, this is the page onto which the issuing State or organisation enters the personal data relating to the holder of the document as well as the data concerning the issuance and validity of the machine readable travel document (MRTD).

94 Open public consultation feedback (see Annex 2).

- **Option 2.0 – Status quo** – this situation corresponds to the baseline situation described above.
- **Option 2.1 – Lowering the fingerprinting age to 6 years**<sup>95</sup>

Under this scenario, fingerprints will be taken from every visa applicant from 6 years of age and above, thereby effectively increasing the group of applicants by adding the age-group of 6 to 11 year-old.

This option is based on technological progress: in 2013 the European Commission’s Joint Research Centre (JRC)<sup>96</sup> carried out a study on the question whether or not automated fingerprint recognition for children is possible with recognition rates similar to those reached for adults. The JRC study concluded that fingerprint recognition of children aged between 6 and 12 years is achievable with a satisfactory level of accuracy under appropriate conditions. One such condition would be, for example, to ensure an appropriate level of training of operators to acquire high quality images.

- **Option 2.2 – Lowering the fingerprinting age including all ages**

Under this scenario, fingerprints would be taken from visa applicants of all ages thereby effectively increasing the group of applicants by adding the age-group of 0 to 11 year-old.

In the same JRC study evidence is presented from other studies that it is feasible to take reliable fingerprints of children even younger than 6, although this would have an impact on the reliability of the fingerprints and be more challenging in terms of technical and procedural requirements.

### 5.2.3. Long-stay visas and residence documents

The policy options to address the identified problem should ensure that verifications of the irregular migration and security risks for a TCN applying for a long stay visa or residence document, verifying the entry conditions at external border, as well as any subsequent exchange of information on the person are done in an efficient and effective manner.

- **Option 3.0 – Status quo** – corresponds to the baseline situation described above

#### Non-legislative options:

- **Option 3.1.a – Improve the exchange of bilateral information on a case-by-case basis**

This would mean strengthening the ways MS currently exchange information in case of a doubt on long-stay or residence documents at a border check or during an application process. The main means of collaboration are via phone, fax, email and through existing networks; SIRENE, national liaison offices, Police and Customs Cooperation Centres (PCCC), National Contact Centre (NCC), etc.). However, this would overload already busy communication networks, like SIRENE, while not meeting the policy objectives. Since stakeholders described it as burdensome and inefficient, this option did not meet sufficiently the objectives to be further assessed.

<sup>95</sup> It is worth noting that Option 2.1. is also in line with the proposal for a revised EURODAC Regulation, which would lower the fingerprinting age from 14 to 6.

<sup>96</sup> JRC (2013). Fingerprint Recognition for Children.

- **Option 3.1.b – Improve the feeding and use of information in the SIS as regards alerts on withdrawn long-stay and residence documents**

This option would entail improving the amount and quality of data fed into the SIS. Article 38.2(e) of Council Decision on the establishment, operation and use of the second generation Schengen Information System (SIS II) requires MS to log “issued identity papers such as passports, identity cards, driving licenses, residence permits and travel documents which have been stolen, misappropriated, lost or invalidated”. Although undoubtedly beneficial, this option would not make the exchange of information systematic and would only focus on SIS alerts. Since it does not contribute to the objective of addressing the lack of cooperation and information exchange at time of issuance it is also discarded from further analysis.

- **Option 3.1.c – Promote the use of security features for the documents containing a chip: Passive Authentication and Extended Access Control**

This option would promote the necessity among MS to perform the systematic authentication of the content of the electronic chip of the documents that have a chip. Even if used at its full extent and in combination with the harmonisation of residence cards, would not have any benefits for long-stay visas (since they do not contain a chip). As well as the previous option, it cannot address the objective of cooperation and information exchange at time of issuance and it only partially addresses the objective of fast and effective border controls. This is why it was not further assessed.

#### **Legislative options:**

- **Option 3.2 – Further harmonise and secure long-stay and residence documents**

Residence permits<sup>97</sup> and long-stay visas<sup>98</sup> are already issued in harmonised format throughout the Schengen area. Both legal bases have been reinforced in 2017. In practice, this sub-option would mean strengthening the format and security features of the remaining residence cards<sup>99</sup> issued without the harmonised format of residence permit. During the adoption of Regulation 380/2008, Member States committed<sup>100</sup> to use the uniform format for residence permits for residence cards. However, some Member States still do not apply this approach (7/25).<sup>101</sup>

- **Option 3.3 – Create an interconnection between national databases that would allow all MSs to query each other’s relevant national databases**

This option entails setting up a distributed database<sup>102</sup> system by interconnecting the existing national databases of long stay visas and residence documents. A distributed

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97 Regulation (EU) 2017/1954 of the European Parliament and of the Council of 25 October 2017 amending Council Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals (amended in 2017).

98 Council Regulation (EC) No 1683/95.

99 A further harmonisation on long-stay visas (e.g. change of format of the sticker and addition of a chip) and residence permits has been deemed not feasible and therefore not discussed in this study.

100 Council Document of 11 June 2008 (13.06), PV/CONS 26 JAI 188, 8622/08 ADD 1.

101 CSES study.

102 For more information see the supporting study "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", chapter 3.1.3, p. 34.

database system would allow all MS to query each other's relevant databases when assessing a long-stay visas or residence document together with the identity of a document holder at an external border crossing point (at second line border check).

- **Option 3.4.A and 3.4.B – Integration in the VIS**

This option is the integration of data on long-stay visas, residence permits and residence cards from national systems into the VIS. Whether to store data or not on applications differentiates the two sub-options analysed 3.4.A (without data on rejected applications) or 3.4.B (with data on rejected applications, which would allow to support future assessment procedures).

Long-stayers as a category are now the only TCN category not covered in any of the IT-systems (as was already illustrated with "missing piece of the puzzle" in Figure 3, section 2.1.3). By including the category of documents in VIS would ensure they are included in a EU IT-system, under a comparable regime for the same TCN for documents issued either under visa-free conditions (the category of TCN whose data will already be in ETIAS, and EES) and visa-required (TCN coming for a short-stay, whose data is already in VIS, as well as EES). Since long-stayers are not covered by EES, VIS would be the *only system* where their data could be checked.

#### **5.2.4. Migration and security checks**

For visa-free travellers, the ETIAS proposal stipulates automatic consultation of "the data present in a record, file or alert registered in the ETIAS Central System, the Schengen Information System (SIS), [the Entry/Exit System (EES)], the Visa Information System (VIS), [the Eurodac], [the European Criminal Records Information System (ECRIS)], the Europol data, the Interpol Stolen and Lost Travel Document database (SLTD) and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN)".

The same principle could by analogy be applied to checks on visa required travellers through VIS by extending its possibility to query additional databases. In this respect, several options exist:

- **Option 4.0 – Status quo**

In this option the current situation of uneven and manual checks against other non-connected systems would persist. Depending on which Member State is doing the checks, the visa applicants would be checked against different national and European databases. As compared to visa-free travellers, fewer checks will be carried out against centralised European databases.

- **Option 4.1 – Systematic and automated check against available databases (ETIAS model)**

Since the VIS is also part of the legal framework setting up interoperability, technical possibilities have opened up to explore the practical communication between various databases in a fast, seamless and systematic manner by authorised users. In fact, after the interoperability proposal was presented, this is the first time that this framework is applied to an EU policy line. In this way, the option 4.1 is building on the benefits opened by the interoperability proposal.

VIS automated database check would follow the same logic as ETIAS. When verifying and assessing the information submitted by applicants, the system would automatically cross-check each application against each of the above mentioned systems (also illustrated in Table 1 below), as well as a dedicated watchlist and would consist of data related to persons who are suspected of having committed or taken part in a criminal offence or persons regarding whom there are factual indications or reasonable grounds to believe that they will commit criminal offences.

In this option, the interoperability components will be used. The risk assessment based on checks against databases will be performed in an automated manner using the interoperability component (European Search Portal).

Table 1: Databases to be checked for the purpose of VIS risk assessment

	Risk assessment					Selection criteria		
	Security		Migration					
	Serious / cross border crime	terrorism	Irregular stay (overstay)	Entry bans / return decisions	Refusal of entry	Relevance	Data protection	Implementation complexity
<b>Databases</b>								
SIS	+	+		+ <sup>103</sup>	+	++	+	+
ETIAS			+ <sup>104</sup>			++	+	++
SLTD	+	+				++	++	++
TDAWN	+	+				+	+	++
EES			+		+	++	+	++
<b>VIS Components</b>								
Screening Rules	+	+				++	-	++
<b>Candidate databases for future integrations</b>								
ECRIS	+	+				- <sup>105</sup>	--	--
EIS	+	+				++	-	--
Watchlist	+	+				++	-	--
EURODAC			+			-- <sup>106</sup>	--	--

• **Option 4.2 – Automated cross-checks + screening rules**

In addition to automated cross-checks of other databases (option 4.1), automated processing through introducing screening rules in VIS could be envisaged, analogous to the ones used in ETIAS. The screening rules is a new tool, which would be an algorithm

103 According to ongoing discussions, return decisions could be stored in the SIS in the future.  
 104 ETIAS would be checked for applicants coming from a country which has just changed visa regime.  
 105 The assessment of ECRIS is based on the current situation. Should the system evolve into ECRIS-TCN, the assessment could have to be repeated.  
 106 The assessment of Eurodac is based on the current situation. Should Eurodac evolve into a case-management system, the assessment would be repeated.

enabling the comparison of data in the applications for a short stay visa with specific risk indicators. The screening rules would thus contain on the one hand data analytics rules, and on the other specific values provided by Member States as well as statistics generated from other relevant border management and security databases. This would enhance risk-assessment capability and in particular to allow for the data-analytics method to be applied. The screening rules would not contain any personal data and would be based on statistics and information provided by Member States concerning risk indicators or threats, abnormal rates of refusal or overstay by certain categories of TCN and public health risks.

As was stated for the option 4.1, this option is also about applying the interoperability framework, building even further on the benefits opened by the interoperability initiative.

### **5.3. Options discarded at an early stage**

- *Copy of the travel document*

Regarding travel documents, the option of incorporating a digital copy of the travel document in another system, e.g. EES, was discarded, because there are no other large-scale IT systems, existing or planned, which could be used to obtain the same result in respect of the same target population.

- *Long-stay visas and residence documents*

Three non-legislative options were discarded early on:

- **Option 3.1.a – Improve the exchange of bilateral information on a case-by-case basis.**
- **Option 3.1.b – Improve the feeding and use of information in the SIS as regards alerts on withdrawn long-stay and residence documents**
- **Option 3.1.c – Promote the use of security features for the documents containing a chip: Passive Authentication and Extended Access Control**

To sum up, while acknowledging their benefits, none of the non-legislative options would fully support the objective of exchange of information, therefore they would not reduce the fragmentation of the information available on TCNs during the issuance process of a new document<sup>107</sup>.

## **6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?**

A summary of different impacts (including fundamental rights, social impacts and economic impacts) can be found in Annex 3.

A detailed consideration on the available data, categories impacted by the envisaged measures and general considerations on data protection are presented in Annex 5.

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<sup>107</sup> See supporting study Legal analysis on the necessity and proportionality of extending the scope of VIS to include data on long stay visas and residence documents (chapter 3.2.1.) for in-depth explanation.

## 6.1. Assessment of policy options

### 6.1.1. Copy of the travel document

#### *Economic costs and benefits*

Two cost estimates were provided during the study<sup>108</sup> on all relevant costs (both one-off and recurrent, as well as recurrent compliance costs) from the options and their sub-options. Eu-LISA estimates the one-off cost for the central system (option 1.1) between € 3,3 – 4 m, while the study places it above € 5 m. For the decentralized system (option 1.2) the study suggests it would entail costs as high as € 200 m. As regards operational costs, eu-LISA places them at around € 375,000 – 560,000 / year.

As shown in the following table, the measures will also produce several important economic benefits for consulates as well as Member States' migration and return authorities. If implemented, they would reduce administrative burden for processing return cases, reduce delays in the procedure and eliminate inefficient procedures involved with retrieving, scanning, zipping and coding hard copies. In fact, both options would be very feasible in practice, since the vast majority Member States are already storing copies of travel document – the options would simply impose a harmonised rule on such storing. Such a change of administrative procedures would in many cases lead to simplification of storing (digital storage). Furthermore, rules on the retention of the travel document (which currently vary among Member States which store copies of it) would be harmonised, which implies moderate changes in national administrative practices.

The identified economic benefits are primarily driven by the choice of main option. While Option 1.1 (centralized storage) performs marginally better compared to Option 1.2 (decentralized storage), both options would **significantly reduce inefficiencies associated with the current procedures**, reflected in significant cost savings (reflected in Table 2 below).

Table 2: Summary of benefits of the policy options

	Option 1.1 – Centralised	Option 1.2 - Decentralised
Consulates		
Cost savings from time spent on responding to supporting document requests	€ 0,7m – € 2,8 m (€ 366 – € 1.462 per consulate)	€ 0,7 – € 2,8 m (€ 366 – € 1.462 per consulate)
Migration and return authorities		
Cost savings from time spent on retrieving TD copy	€ 3,2 – 12,7 m	€ 3,0 – 12,3 m
Cost savings from reduced delays in return procedures	Daily costs of delays reduced by up to 14 days € 46,3 m – 92,6 m	Daily cost of delays reduced by up to 13,5 days; costs incurred for delays of ½ day € 44,6 – 89,3 m
Cost savings from executing a higher proportion of return decisions, in less time	€ 6,7 m – 21,4 m (if 50% improvement) € 10,0 m – 32,1 m (if 75 % improvement)	€ 6,6 m – 21,3 m (if 50% improvement) € 9,9 m – 31,9 m (if 75% improvement)

108 Further details on the estimates can be found in the Ecorys study (chapter 3.6.2) and in the annexed eu-Lisa study (p. 79) respectively.

	Option 1.1 – Centralised	Option 1.2 - Decentralised
Total benefits (50 % improvement)	€ 57,5 m – 132,2 m	€ 55,6 m – 128,3 m
Total benefits (75 % improvement)	€ 60,8 m – 142,9 m	€ 58,9 m – 139,0 m

In terms of the impact on duration and timeliness of return proceedings, both options would significantly reduce the waiting time of migration and return authorities during the process of confirming the identity of TCNs. **Under Option 1.1, the delays will be effectively eliminated, resulting in a delay reduction of up to 14 days.** Option 1.2 would have a slightly lower impact as Member States’ authorities may still be required to wait for several hours before receiving a reply from the responsible national authority for storing the travel document. The potential benefits to be realised from both options will be **sufficiently substantial to offset the costs incurred to implement and comply with the respective options**, especially for option 1.1 (centralised storage).

### *Policy impacts*

Whereas the baseline scenario could not achieve any of the two objectives, the storage of visa applicants’ travel documents in VIS will improve the implementation of the objective of facilitating returns of TCNs who have been issued with a return decision. Both Option 1.1 and Option 1.2 will enable Member States to obtain the necessary evidence for proving the nationality of TCN visa overstayers who have been issued with return decisions, but who lack a valid travel document, to equal effect. Moreover, the VIS is the only EU instrument storing data on TCN outside the EU borders, i.e. in the country of origin or another country where the person applies for a visa, therefore the only EU instrument that could provide, in a systematic manner, the necessary data to achieve the stated policy objectives in this case. No other measure is currently available at EU level enabling authorities to obtain a copy of the TCN's travel document.

As regards the change of return effectiveness, the copy of the TCN’s travel document will be extremely useful as a means of evidence for the third country regarding the identity and nationality of the person to be returned and thus sufficient for facilitating the return. As return effectiveness hinges also on external factors, such as general cooperativeness of third countries on return, the actual impact is not easy to measure.

Table 3: Effectiveness in meeting the objectives

Option	Objective	Specific objective I: assist in the identification and return of TCN	Specific objective II: efficiency of VIS in return procedures
<b>1.0 Baseline</b>		<b>0</b>	<b>0</b>
<b>1.1 Digital copy of the travel document in the central VIS</b>		<b>++</b>	<b>++</b>
<b>1.2 Digital copy of the travel document in national systems</b>		<b>+</b>	<b>+</b>
<b>A – Biographical page only</b>		<b>+</b>	<b>+</b>
<b>B – All used pages</b>		<b>++</b>	<b>++</b>

Based on inputs provided during the stakeholder consultation, the contracted study cautiously assumed that the proportion of effectively executed returns of TCN visa overstayers without travel documents will increase by 50% to 75% as a result of the proposed options.

- If the proportion of effectively executed returns increases by 50%, then the benefit is an additional 7.934 to 19.834 TCNs returned compared to the current situation.
- If the proportion increases by 75%, then benefit is an additional 11.900 to 29.751 persons returned.

These considerations are reflected in considering the scoring of the options for meeting the objectives in Table 3 (above).

Table 4: Estimated benefits for the implementation of returns

Impact on the implementation of returns: Additional returns of TCNs without travel documents						
Estimated number of returns not implemented		% improvement	Number of additional returns: Scenario of 50% improvement		Number of additional returns: Scenario of 75% improvement	
Lower	Upper		Lower	Upper	Lower	Upper
15.867	39.668	50% – 75%	+ 7.934 TCNs returned	+ 19.834 TCNs returned	+ 11.900 TCNs returned	+ 29.751 TCNs returned

*Fundamental rights impacts*

The **storage of a digital copy of the visa applicants’** travel document in the central VIS (Option 1.1) or national VIS (Option 1.2) can have a positive impact for the right to asylum (Article 18 CFR) and the protection of the principle of *non-refoulement* (Article 19 CFR) by providing designated authorities which already have access to the VIS with access to additional evidence to prove an asylum seekers’ identity. The sub-options could be useful to asylum authorities for verifying the identity of a person in need of international protection (sub-option A) or for the assessment of merits of asylum cases (sub-option B). The existing safeguard which bans the transfer of personal data to third countries if that person has requested international protection continues to apply (Article 31(3)), mitigating the risk of serious harm for asylum applicants or their families.

Sub-options A and B would create an interference with the right to privacy and family life (Article 7 CFR) and the right to the protection of personal data (Article 8 CFR), as it involves the processing of personal data and access to these data by public authorities. Sub-option A implies the processing, of nearly the **same amount and type of personal data as is processed in the current situation, merely stored in a different format**. The additional category of data is limited to the personal (national) identification number of the document holder. This additional information does not further affect the privacy of the person, and for this reason the limitation to the right to privacy is modest. With respect to the right to data protection, storing a copy of the passport involved further data processing of the image of the document; however, it does not extend the information already available to authorities and the existing rules and conditions of access to this information.

Sub-option B involves the processing of a larger amount of new data, consisting in images of used visa pages in addition to data in sub-option A, for all TCNs under visa obligation.

Both sub-options meet the objective of enhancing the return rate of TCN under visa obligation and do not go beyond what is necessary to achieve this objective.

Existing safeguards, including prohibiting the further processing of these data by authorities as well as to prevent unauthorised access and unlawful sharing with third parties should limit any potential negative impacts implied by both sub-options. As regards sub-option B, additional safeguards should explicitly prohibit the sharing of these data with third parties, given that it is not foreseen to positively contribute to the objective of facilitating return.

For both option 1.1 and 1.2 risks with regard to purpose limitation and accessibility of personal information can be mitigated by introducing strict safeguards against unauthorised access.

**6.1.2. Biometric data of minors**

*Economic costs and benefits*

In terms of costs, the one-off costs are higher for option 2.2 (taking fingerprints of all children) than for option 2.1 (lowering the fingerprinting age to 6). This is due to the fact that taking fingerprints of children younger than 6 is likely to require a new, different type of scanners and software.

Table 5: Overview cost-benefits option 1 and 2

	Option 1 (6-12 years)	Option 2 (all ages)
<b>One-off costs</b>		
Child- friendly equipment	No costs	€13 002 000
Increased size of biometric samples in VIS- BMS costs	Increased cost by 4.4 %	increased costs by 8.8 %
Training costs (ESPs, Consulates)	€ 138 175	€ 138 175
<b>Operational costs</b>		
Workload and administrative burden	Range from €52 208 to €261 066	Range from € 208 832 to € 1 044 264
<b>Costs for Member State authorities and opportunity costs</b>		
Impacts on TCN visa applicants (not related to fundamental rights)	Less than one minute additional waiting time per child	Less than two minutes additional waiting time per child
Impacts for Member States’ visa authorities	No costs/ savings	No costs/ savings
Impacts for Member States’ authorities dealing with missing children/ unaccompanied children	Savings unknown	Savings unknown

*Policy impacts*

Taking fingerprints of children under 12 would support border authorities in detecting identity fraud as it would help them to ascertain whether the child present at the border is the child that has been granted a visa, which means options 2.1 and 2.2 would satisfy the VIS objectives. However, the JRC study on fingerprints concluded that the reliability of fingerprints is lower for children under the age of 6. This is reflected in the scoring of

whether the measures would meet the objectives (lowering the fingerprinting age to all ages thus scores lower since fingerprint reliability cannot be guaranteed).

Fingerprints constitute a child protection safeguard since collecting and storing them facilitates the identification of traffickers and trafficking networks, as the file of the child in the VIS is linked to that of the parent/adult that accompanied the child. However, as already mentioned in the Eurostat Report on Trafficking in Human Beings, only 2% of victims of trafficking are under 12 years old. On the other hand, 17% of victims are in the 12-17 age range and this much more significant percentage of victims can already be helped if fingerprinting is lowered under 12 years, to take into account the 5-year maximum duration of the validity of the visa (i.e. the 12 to 17 age range for visa holders, corresponds to a potential range of applicants between 7 and 12 years of age). These two factors taken together: lower reliability of fingerprints for children under 6 and relatively lower number of children which could be helped with this measure means that options 2.1 and 2.2 would satisfy the objective of fighting child trafficking to a different degree – as reflected in the scoring: option 2.2. is less effective in fighting child trafficking than option 2.1.

The prevention of identity fraud is raised by several consulates consulted as part of the supporting study as the main potential benefit of the proposed measure, which means stakeholders recognize it as a positive measure.

Table 6: Effectiveness in meeting the objectives

Option	Objective	Specific objective I: VIS objectives (fraud, checks, Dublin regulation)	Specific objective II: Fight against child trafficking
2.0 Baseline		0	0
2.1 Lowering the fingerprinting age to 6 years		++	++
2.2 Lowering the fingerprinting age to all ages		+/0	+/0

Under the baseline scenario the fingerprints of each incoming TCN child are not checked nor verified at Schengen entry ports, which means that the baseline scenario 2.0 does not help to meet either of the objectives (neither with VIS objectives nor with the fight against trafficking).

Fingerprints contribute to the subsequent identification and verification of the identity of TCN children who were <12 when applying for the visa, on Schengen territory, hereby allowing for family unity within and outside the Schengen area, verifying the family relationship, Dublin and asylum examination (i.e. VIS objectives).

Moreover, the VIS is the only EU instrument storing data on TCN children of nationalities subject to a visa obligation, and collecting these data outside the EU borders, i.e. in the country of origin or another country where the person applies for a visa. Hence the VIS is the only means to ensure, in a systematic manner, that the necessary data to achieve the stated policy objectives of the visa policy. No other instrument is currently available at EU level enabling authorities to perform identifications on TCN children or to provide such

information in case needed for identifying victims of trafficking or launching SIS alerts on missing children.

### *Fundamental rights impacts*

Both options 2.1 and 2.2 should have an overall positive impact on the protection of fundamental rights. Fingerprints would assist in protecting children against trafficking and in identifying children who have gone missing, or who are abducted or become victims of human traffickers. It would also facilitate reuniting these children to reunite with their family members (but only if it is in their best interest).

Although the existing VIS legal basis has no explicit purpose in regard to protecting children, VIS procedures and the application of the VIS should, like all EU actions, in all times respect the best interests of children as stipulated in Article 24 of the EU Charter of Fundamental Rights. Explicit safeguards in this respect will be added in the Visa Code and the VIS Regulation as regards carrying out the application procedure for children. These safeguards are part of both proposed options (against the benchmark of the baseline scenario – which already contains strong safeguards, as explained in section 5.1).

FRA provided insights into the impact on children<sup>109</sup> in relation to the proposal for a revised Eurodac Regulation, which also provides a lowering of the fingerprinting age for children in the asylum process to 6 years of age, which is why the comments are valid for this proposal as well. FRA reminded that, as is stated in the Article 3 of the United Nations (UN) Convention on the Rights of the Child, for all actions and decisions concerning children, the child's best interests must be a primary consideration. Children are an extremely vulnerable group and the storage of biometric data could have both positive and negative impacts, therefore lowering the age can only be justified if it explicitly pursues a child protection objective and sufficient safeguards are in place.

Both option 2.1 and 2.2 will also have an impact on the rights to human dignity and privacy and personal data protection. It concerns the collection and storage of further sensitive data (fingerprints) of a particularly vulnerable group in a large scale IT system. However, fingerprints are the only means to unambiguously identify a child and, in this way, to better prevent child related abuses using visa, such as using false identities to traffic children into the EU.

Furthermore, the processing of fingerprint data for children will be subject to the strict safeguards, which already exist for the processing of biometric data of TCN visa applicants above the age of 12.

As described earlier, cases of children entering or attempting to enter the EU on a visa who are victims of child trafficking or other abuses, could be detected by a more complete information file in the VIS. This objective requires that the relevant or designated authorities would need access to search and process the data stored in VIS. Child protection authorities currently do not have access to the VIS.

Fingerprints must be taken in full respect of human dignity and in a manner that is appropriate to the child's age and maturity. A provision to the Visa Code could be included

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109 See <http://fra.europa.eu/en/opinion/2017/impact-proposal-revised-eurodac-regulation-fundamental-rights>.

explicitly requiring that fingerprints be taken in a child-friendly and child-sensitive manner by personnel who have been specifically trained to collect biometric data from children.

### **6.1.3. Long-stay visas and residence documents**

#### *Economic costs and benefits*

The Feasibility Study<sup>110</sup> already looked at the feasibility of different options for storing long-stay documents and assessed IT-security, ease of implementation, management and costs of different options, namely a decentralised and centralised database (corresponding to options 3.3 and 3.4a/b). It concluded that a central repository as part of the VIS would score higher in all the criteria, especially at technical and operational levels. The impact that the repository (option 3.4.a / 3.4.b) would have on the existing VIS is low when considering the data model, services and overall capacity. The eu-LISA study on the technical and budgetary impacts of the VIS developments estimated an on-off cost of 10-12M€ for the repository. Economic costs and benefits of further harmonisation (option 3.2) are analysed in more detail in the IA for residence document harmonisation by DG JUST.<sup>111</sup>

#### *Policy impacts*

With non-legislative options already discarded for not meeting the proposed objectives, all retained options would meet the general objectives, as seen below in Table 7. Whereas, the baseline scenario 3.0 meets neither of the two specific objectives, further harmonisation of documents (option 3.2), would help to strengthen checks at external borders / in the territory, but it would not be helpful with improving security through better information exchange, which is reflected in the scoring. In fact, the objective of information exchange can only be achieved if there is a data-base of documents, which means that only options 3.3, 3.4.a/3.4.b meet this objective, as is reflected in the Table 7 below.

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110 See Feasibility Study, page 8.

111 See IA on ID cards and residence documents, chapter 6.2.

Table 7: Effectiveness in meeting the objectives

Option	Objective	Specific objective 1: Strengthen checks	Specific objective 2: Information-exchange
3.0 Baseline		0	0
3.2 Further harmonisation		+	0
3.3 Decentralised database		+	+
3.4.a Store data on issued documents		+	+
3.4.b Store data on applications <sup>112</sup>		++	++

### *Impact on fundamental rights*

Impacts on fundamental rights mainly focus on data protection and are assessed for the options and sub-options that meet the two main policy objectives (non-legislative options were already discarded for not meeting the proposed objectives, as was the case with the baseline scenario). Therefore, the analysis focuses only on options 3.2, 3.3, 3.4.a and 3.4.b.

Table 8: Analysis of impacts on fundamental rights (against Articles of EU Charter of Fundamental Rights)

Policy options	Article 2 (life)	Article 7 (privacy)	Article 8 (p.data)	Article 45(2) (freedom of movement)
Option 3.2 Further harmonisation	+	0 to -	0 to -	+ (if residence cards are included) 0 (if they are not)
Option 3.3 Decentralised database	+	-	-	+ (if residence cards are included) 0 (if they are not)
Option 3.4 Include long-stay documents in the VIS				
Sub-option a): Store data on issued documents	+	--	--	++ (if residence cards are included) 0 (if they are not)
Sub-option b): Store data on applications	++	---	---	++ (if residence cards are included) 0 (if they are not)

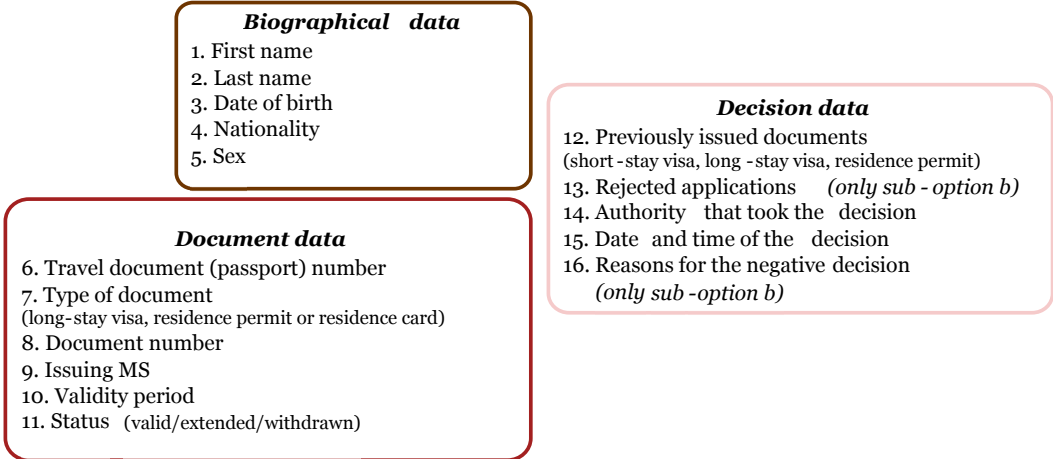
Option 3.2 (further document harmonisation) would have a limited impact on personal data protection, as it would not significantly change data processing as compared to the baseline. The situation is different for the options which entail collecting and storing data in a database.

Whether to store data or not on applications differentiates the sub-options 3.4.a (without rejected applications) and 3.4.b (with data on rejected applications) (see Figure below). In order to understand the impact of data processing, it is important to explain which data will

<sup>112</sup> Except on residence cards, whose sole requirement for issuing is a proof of a family link with a mobile EU citizen.

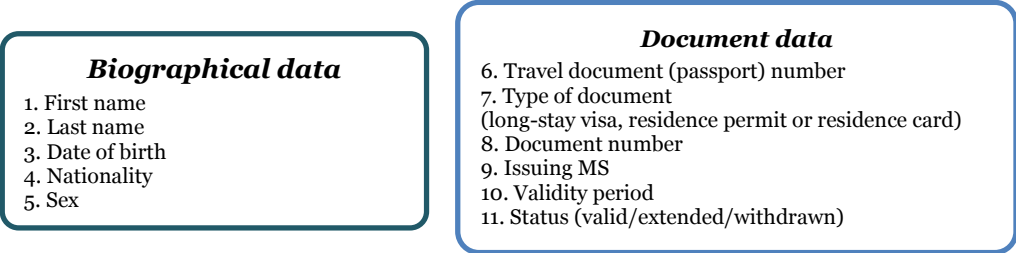
be collected. The following categories of data will be collected: biographical data of the holder or applicant, travel document data, decision data, issued document data.

Figure 7: Dataset for long stay visa/ residence permit file



In the case of option 3.4.b, the data stored upon *applying for a long-stay document* would be a combination of the biographical and travel document data presented above and would also include: the fact that an application for a certain type of document was lodged, when, where and with which Member State authority.

Figure 8: Dataset for residence card file



Residence cards are a special case: as regards the residence card file, information will only be stored upon issuing the document (i.e. the residence cards). Authorities responsible for issuing these documents (consulates or legal migration authorities) would have access to introduce and store data upon application/ issuance (of the residence card), and subsequently to amend, and update the file. Border authorities and authorities responsible for checks within the territory, would only have access to check with the data provided by the person and would not have access to carry out modifications of the personal data.

The table 9 below summarises the processing applicable to the options.

Table 9: Data processing

Option	Collection	Storage	Access	Transfer <sup>113</sup>	Deletion
3.3 Decentralised database	0	0	√	0	0

113 To a third-country or international organisation - in line with what currently exists for VIS data, exceptional transfer of some data could take place for the prevention, detection and investigation of terrorism or other serious criminal offences. In such case, the same conditions and safeguards that currently exist in the VIS would apply.

3.4.a Store data on issued documents	√	√	√	√	√
3.4.b Store data on applications	√	√	√	√	√

Option 3.3 would have an impact on data protection, as it would add an additional access to existing data<sup>114</sup> (and thus more processing, and more risks of unlawful access to or use of the data).

Option 3.4.a would have a stronger impact on data protection, as, in addition to access, it entails the collection and storage of data.<sup>115</sup>

Finally, option 3.4.b would have a slightly stronger impact on data protection compared with option 3.4.a as it involves the processing of application data in addition to issued document data. It would thus entail the processing of a larger dataset.

Both options 3.4.a and 3.4.b entail more risks to data than option 3.3 as they rely on a central database (the VIS) for storage.<sup>116</sup> However, it also has to be taken into account that while more data is at risk, the likelihood of a breach is smaller as there is only one system to protect and monitor. This consideration should nevertheless be qualified, as both option 3.4.a and 3.4.b propose a limited dataset: as per the current proposal, they would entail the processing of 16, 11 respectively, data items, most of which are based on the document dataset. The dataset does not encompass the special categories of data that are considered as particularly sensitive.<sup>117</sup> The “reason for the negative decision” might, if left as a free text field, reveal data related to private life or sensitive data on rare occasions. The use of a drop-down menu, tick boxes or another technical feature of the form will prevent this as an additional safeguard. The reasons for the negative decision should be provided in a manner that is limited to allowing the designated authority to achieve the purpose of carrying out the assessment of security and irregular migration checks (through verifications on whether the person is registered in the system with previous refusal due to identity or document fraud or for being a threat to the national security of one or more Member States), subject to the existing limitations in law. Additional safeguards will be included to ensure that the use of the data is fully in line with applicable legislation in the field of legal migration or freedom of movement, as applicable, at either EU or national level, notably that a previous refusal of a document should not automatically lead to a new refusal and that each application should be considered on its own merits.

114 According to the European Court of Human Rights and the European Court of Justice, access and use of personal data by the authorities constitute a further interference with the right of privacy. See EDPS (April 2017) “*Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit*”, page 11. See also and [Weber and Saravia v. Germany no. 54934/00, paragraphs 76 to 79](#).

115 Indeed, distinct processing operations may constitute separate limitations on the right to personal data protection and when applicable with the right to privacy. See EDPS (April 2017) “*Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit*”, page 11.

116 From a data protection perspective, it is considered that central databases create a “single point of failure” and an addition attractiveness for hacking considered the amount of data stored in a single place. On the other hand, consulted stakeholders mentioned that decentralised storage (having multiple, small databases only containing a subset of information) could be seen as more vulnerable than central storage of all data.

117 Article 9 of the General Data Protection Regulation (GDPR).

Options 3.3 and 3.4 would not affect the right of the individuals to access their personal data, rectification and objection. No derogation to the general data protection regime of Member States or of the VIS Regulation would be created. All existing provisions and safeguards would apply, including for option 3.3 the ones present in the current VIS Regulation, among which Article 38 (Right of access, correction and deletion).

Options 3.3, 3.4.a and 3.4.b would not affect the right of the individuals to access their personal data, rectification and objection. No derogation to the general data protection regime of Member States or of the VIS Regulation would be created. All existing provisions and safeguards would apply, including for option 3.3.

Only a limited data set would be collected, at most, on about 22 million documents<sup>118</sup> (including residence cards). It must be taken into account that this figure does not represent net new sets of *personal data* as compared to what is already registered in the EU large scale IT systems for borders and migration:

- As regards TCN under a visa obligation, depending also on the regime in place in each Member State, there is a high likelihood that a person applying for a residence document has already access the territory of the Member States with a short stay visa in order to apply for the residence document. In those cases, these persons are already registered in the VIS.
- As regards a visa-free TCN, with the entry into operations of ETIAS the data of each person travelling for a short stay to EU will be registered (except fingerprints). With the entry into operations of EES, the data of all visa free TCN entering the EU territory, including biometric (live facial image and four fingerprints), will also be registered in this system, with the exception of holders of residence cards (who are exempted from registration in the EES as in their respect the obligation of stays on the territory not exceeding 90 days in any 180 days does not apply).

The above considerations also imply that for the persons applying for a long stay document (visa or residence permit), the personal data is already recorded in a centralised database, VIS and in the future ETIAS and EES, and therefore creating the file for the long stay application will entail reusing personal data, including biometrics, where available, from existing records.

**Right to life** (Article 2 CFR): options 3.2, 3.3 and both sub-options under 3.4 may have a positive impact on the right to life by increasing security. The extent of the link between long-stay and residence documents fraud and the right to life of EU residents is difficult to assess, due to limited data available.

Option 3.2 would have a positive impact on the right to life, as it would reinforce the security of the EU through making long-stay and residence documents more secure;

- Options 3.3 and 3.4.a would have a similar positive impact on the right to life, as they would both reinforce the security of the EU through the access of border guards, law enforcement and migration authorities to long-stay and residence document data. This

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<sup>118</sup> Numbers taken from the previous study on the extension of the VIS. Currently there are an estimated 22 million documents in circulation (19 million residence permits, 2 million long-stay visas and an amount of residence cards not exactly known but estimated at 1 million).

positive impact may be more significant than the one of option 3.2 since the options would create a “white list” of valid documents adding another level of security on top of existing security features;

- Option 3.4.b would have, compared to options 3.3 and 3.4.a, a more significant positive impact on the right to life, as it would further reinforce EU residents’ security via the consideration, during the issuance process of long-stay visas or residence permits, of relevant information linked to the person’s previous applications.

Similarly, access by law enforcement authorities for preventing terrorism and other serious criminal offences could also have a further positive impact on this right.

#### **Right to privacy (Article 7 CFR):**

- Option 3.2 would have a limited impact on the right to privacy, as it would not significantly change data processing as compared to the baseline;
- Option 3.3 would have a more significant negative impact on the right to privacy than 3.2, as it entails additional access to and use of existing data by public authorities<sup>119</sup>;
- Option 3.4.a would have a more significant negative impact on the right to privacy than 3.3, as the option entails the storing, access and use by a public authority of data related to private life<sup>120</sup>.
- Option 3.4.b would have a more significant negative impact on the right to privacy than 3.4.a, as the option entails the same processing by public authorities as 3.4.a, but for a larger dataset.

**Right of freedom of movement and of residence (Article 21 TFUE, Directive 2004/38, and Article 45.2 CFR)<sup>121</sup>:** options 3.2, 3.3, and 3.4 (both sub-options) would have a positive impact on this right if residence cards are included in their scope. It would lead to facilitation and time savings during external border checks (and internal ones, when they are exceptionally carried out as border guard would more easily recognise the validity of the residence card.

- Option 3.3 would have a slightly more significant, positive impact on the right than 3.2, as the check to the database would also solve issues related to technical problems in reading the chips and thus prevent lengthy second-line checks in such cases;
- Option 3.4 (both sub-options) would have a more significant, positive impact on the right than 3.3, as the check to a central database would be quicker than a check to a decentralised one, therefore time and convenience as facilitation gained would be more important.

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119 See Digital Rights Ireland, paragraph 35, available at the following [link](#).

120 EDPS (April 2017) “*Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit*”, page 11. The European Court of Human Rights has further specified that “data related to private life” should not be interpreted restrictively and encompasses business and professional activity. Within the proposed dataset, the reason for the negative decision on an application could contain such information (e.g. the person employment, family, health situation has changed). See European Court of Human Rights, *Amann v. Switzerland* [GC], no. 27798/95, § 65, available at: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-58497"\]}](https://hudoc.echr.coe.int/eng#{)

Article 45.2: “Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State”.

As regards the inclusion of TCN members of family of a mobile EU citizen (i.e. of residence cards data), it must be underlined that this impact assessment treats the situation of all categories of TCN in a non-discriminatory manner. The distinction made between family members of mobile EU nationals and the other TCN, family members of an EU national or not, is driven by the difference in the residence document that is issued, i.e. a card for the first category, a permit for the second. The difference between these two categories of documents comes from the different conditions of issuance, i.e. based on EU legislation which distinguishes between the conditions applied to issuing residence permits to family members of EU nationals in general (the Family Reunification Directive), and the conditions applied to issuing cards to family members of mobile EU nationals (Directive 38/2004).

However, this initiative is without prejudice to the conditions or grounds of issuance of these documents. Instead, it focuses on two objectives (facilitating checks at borders and ensuring the security of the Schengen area) which stem from the conditions of crossing an external border to which all TCN, irrespective of the reasons for which a document of residence was issued to them, are subject.

There is currently no mechanism in place to exchange information among Member States enabling them to assess at borders and even before a residence document is issued, whether the person could pose a security risk or is an identity fraudster, as the current assessment is based exclusively on national information. Hence, if this category of TCN was left outside the scope of this initiative, the information gap and thus the security gap identified in the problem definition would be reduced, but not closed and advantage of this could be taken in order to obtain an easier, less checked and more comprehensive (due to extensive rights attached to it) access to enter, freely move and reside in the EU territory.

#### ***Considerations on biometric data in option 3.4***

Adding biometric data, and particularly fingerprints, to the data set to be accessible in the database would have the advantage of allowing identification of the bearer of the residence permit, residence card or long-stay visa<sup>122</sup> with a level of certainty much higher than as it would be without (relying solely on visual identification and/or identification based on biographical data). It would thus ensure that these documents are solely used by the genuine bearer. Border guards, law enforcement or migration authorities would be able to detect cases of multiple identities across systems using biometrics in line with the interoperability proposal recently tabled by the Commission<sup>123</sup> and similarly to what already happens for short stay travellers whose biometrics are collected in the EES and VIS.

However, the collection and storage of long-stay travellers' **biometric data** by Member States is currently **not harmonised**. While some Member States collect and store fingerprints in national databases, some other Member States delete the biometric data from their databases after placing it on a residence permit or a card. Therefore, **while for**

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122 According to the 2017 Feasibility study (p.33), there is no EU legislative provision for the collection of biometric data for long-stay visas. Some MSs collect fingerprints (a variable number depending from the MS) and facial image. However, in some cases no biometrics are collected at all or they are deleted shortly after the issuance of the document (e.g. after 90 days).

123 COM(2017) 794.

**some persons biometric data is available, for some others it is not.** The number of fingerprints may also vary depending on the Member State. Due to this situation, collecting biometric data from national databases to store them in the EU database would lead to differences in the collected data set depending on the person and the Member State that collects it.

According to the strict necessity principle in data protection, if the system can achieve the objectives without biometric data for some persons (e.g. when they are not available, as some Member States have not stored them in a database), it means that biometric data is not strictly necessary. However, given that biometrics of most of the TCN affected by this measure are or will be available in the central EU databases and that with the proposed Shared BMS of the interoperability proposals there would be no technical issue in handling different types and different combinations of biometrics, the impact on data protection is significantly limited. The system could work with just storing the minimum denominator of biometrics per documents (e.g. two fingerprints and facial image for residence permits, facial image for long stay visa and residence cards).

#### **6.1.4. Migration and security checks**

##### *Economic costs and benefits*

The budgetary impact of this measure could be estimated on the basis of extensive existing analysis of the similar measure in ETIAS. However, it must be taken into account that significant differences exist: there are no setup costs for the VIS, which is already up and running. Costs to be taken into account would include the search interface to other systems to be developed. In option 4.1 the interoperability platform will be reused. This will reduce the overall cost in a consistent manner and would avoid natural redundancies of heterogeneous elements.

Based on similarities with ETIAS (although for a size of the population of about half that of ETIAS) – and taking interoperability development costs as already incurred, a high level estimate would place the investment for the central system (eu-LISA implementation) for implementing option 4.1 (automated and systematic checks against multiple databases) at € 10 m. Regarding the business impacts for the MS, the interface and process for the ETIAS may be reused, thus significantly limiting the costs and complexity for MS integration.

Both option 4.1 and 4.2 (automated cross-checks + screening rules) would entail similar costs from this perspective.

##### *Policy impacts*

The legitimate public interest of ensuring a high level of security is positively affected by the implementation of automated data-base check. A better and more accurate identification of the security risk of TCN crossing the external border of the Schengen area supports the detection of cross border criminality, and it more generally facilitates the identification of persons whose presence in the Schengen area would pose a security, migration or public health threat. It would thus contribute to improving the security of the citizens present in the Schengen area and enhancing internal security in the EU.

Benefiting from interoperability proposal, it would be illogical to enable such cross-checks for visa-exempt TCN, yet choose not to use it for visa required TCN, who by definition come from countries with a higher migratory-security risk for the EU. Thus, the proposed measure, for both options 4.1 and 4.2, is rebalancing a potential unbalanced treatment between visa-exempt travellers and visa-required travellers, whereas option 4.0 (the baseline) does not meet this objective.

Table 10: Effectiveness in meeting the objectives

Option	Objective	Migration and security assessment
<b>4.0: Baseline</b>		<b>0</b>
<b>4.1: Automated cross-checks</b>		+
<b>4.2: Automated cross-checks and screening rules</b>		++

*Fundamental rights impacts*

The proposed measure (for options 4.1. and 4.2 which entail taking action) has an impact (positive, negative or both) on each of the following fundamental rights: right to liberty and security (Article 6 of the Charter), the protection of personal data (Article 8 of the Charter), the right to non-discrimination (Article 21 of the Charter), and the right to an effective remedy (Article 47 of the Charter).

As mentioned by FRA in its report on interoperability<sup>124</sup>: "Receiving the full picture about a person contributes to better decision-making. To this end, safeguards need to be in place to ensure the quality of the information stored about the person and the purpose of the data processing. Such safeguards should prevent unauthorised access and unlawful sharing of information with third parties. To ensure the right to an effective remedy, practical possibilities to rebut a false assumption by the authorities and to have inaccurate data corrected need to be in place." At the same time, this measure guarantees non-discriminatory checks for all short stay visa applicants, irrespective of the Member State with which they are applying – which is currently not the case. The VIS Regulation already contains guarantees ensuring information for the person who submitted an application and effective remedies (as explained in section 5.1 in the baseline description).

The proposed measure aims at enhancing security and irregular migration checks, hence contributing to the legitimate public interest of ensuring a high level of security. As such, it can contribute to the protection of people’s right to life (Article 2 of the Charter). A better and more accurate identification of the security risk posed by TCN applying for a visa allowing them to cross the external border and move freely within the Schengen area facilitates the identification of persons whose presence in the Schengen area would pose a security threat. This way the proposed measure would contribute to improving the security of the citizens present in the Schengen area and enhancing internal security in the EU.

124 [Fundamental rights and the interoperability of EU information systems: borders and security](#), Report by the EU Agency for Fundamental Rights.

The proposed checks against a number of migration and security databases do not entail collecting new data from the applicants, however they entail new processing, by checking their bio-data, in particular biometrics, against a number of large-scale databases which were previously not part of the compulsory checks in the visa procedure. However, these checks are currently either already done by national authorities (SIS, Eurodac, SLTD, TDAWN) within the consulates (at an uneven or ad-hoc basis) or at borders (compulsory), or will become compulsory checks in the future (ETIAS). The only new system that will be checked against is ECRIS-TCN, which is however included as a compulsory check for ETIAS applicants.

Given the purpose of the visa examination procedure which entails an assessment of the security and migratory risk of the visa applicant, and that all the above mentioned databases respond to this purpose, the processing against databases will be limited to what is necessary to attain the objective of ensuring a high level of security of the visa processing. The checks will be carried out with a limited sub-set of biographical data together with fingerprints, thus limiting significantly the possibility of false matches. Moreover, the searches will be foreseen so as to return an informative result to the visa processing authority. They will not trigger an automatic refusal of the visa and cannot, taken alone, constitute a reason for refusal.

The search results will not be stored, therefore no possible breach of its integrity or of the confidentiality of the data subject could take place. The measure is also subject to the purpose limitation principle, as the data that will be used for these checks will not be further processed in a manner that is incompatible with the stated purposes. The envisaged data processing is therefore adequate, relevant and not excessive in relation to the purposes defined. Finally, all existing VIS safeguards regarding the right of the data subject, including the right to access, deletion and the effective remedy will apply to this procedure as well.

As regards the screening rules, they are devised on the exact same conditions as those applied in ETIAS to visa free TCN. They do not entail processing of personal data, only a check against a number of statistical indicators, based on a model customarily used in migratory and risk assessments (e.g. Frontex annual risk assessment). Specific safeguards ensuring that the right to non-discrimination based on 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 will be expressly provided. To ensure the supervision of the set up and application of the screening rules and in particular of the non-discrimination principle, the specific risk indicators on the basis of which the screening rules will be developed, will be defined, established, assessed ex ante, implemented, evaluated ex post, revised and deleted based on the appraisal and recommendations of the Fundamental Rights Guidance Board established by the ETIAS Regulation, and which is composed of the Fundamental Rights Officer of the European Border and Coast Guard Agency, a representative of the consultative forum on fundamental rights of the European Border and Coast Guard Agency, a representative of the EDPS, a representative of the European Data Protection Board and a representative of the Fundamental Rights Agency.

In terms of proportionality, limitations to privacy and data protection brought about by options 4.1 and 4.2 (which is similar to 4.1 in terms of data protection impact, as the screening mechanism does not entail processing personal data) preserve the essence of the rights.

## **7. HOW DO THE OPTIONS COMPARE?**

The options for all four problems analysed will be scored for their effectiveness in meeting the objectives; the efficiency (the result of striking a balance between costs and benefits); their social impact and impact on fundamental rights – given the fact that the measures involve a trade-off between fundamental rights impacts and gains in other terms (i.e. security); and lastly for their coherence with overarching EU policies.

### **7.1. Copy of the travel document**

#### *Efficiency and effectiveness*

Both Option 1.1 (centralised storage of travel document copy) and Option 1.2 (decentralised storage), as well as their sub-options, can contribute to the identified objectives of general interest, though Option 1.1 performs moderately better and in a far more cost-efficient manner than Option 1.2. This is reflected in the scoring for cost efficiency and effectiveness in meeting the objectives, in Table 11 below.

Beyond improvements that would be achieved by sub-option A – which would already be sufficient for the identified purposes of facilitating return procedures, sub-option B would translate into an improvement when it comes to proving the travel history, which is important for VIS's ancillary purposes in return and asylum procedures.

#### *Social impacts and fundamental rights*

The analysis of impacts fundamental rights (section 6.1.1.) showed that the all proposed options would have a positive effect on asylum procedures (to identify persons in need of international protection).

In terms of negative effects on fundamental rights, storing a copy of the travel document would entail further processing of personal data. These considerations are also reflected in the scoring for fundamental rights in the Table 11 below.

#### *Necessity and proportionality*

For options 1.1, Option 1.2 and Sub-option A the measure would be demonstrably suitable with respect to achieving its purpose, therefore both options satisfy the proportionality test. The travel document data page is precisely what is required by third country authorities as proof of nationality in the absence of a valid travel document.

While both options will achieve the same level of effectiveness in fulfilling the objectives, Option 1.1 achieves a higher level of efficiency (timeliness, cost-efficiency and security). Furthermore, Option 1.2 (decentralised storage) cannot necessarily be considered as less intrusive given that the same information would ultimately be made available to the designated return authorities in all Member States. No matter which technical architecture

is selected, the measure is intended to enable a Member State’s authority to access data stored by (an)other Member State during the visa procedure.

As to the proportionality of the sub-options, the scope of personal data to be stored under sub-option A is both relevant and necessary for the stated purposes of facilitating returns. The intrusiveness of the proposed sub-option is in itself very modest, as the same data are already entered in VIS in the current situation, albeit in a different format.

As regards sub-option A, assuring that appropriate safeguards prevent against the processing of these new data, the interference on the right to privacy and the protection of personal data would not be greater than the current VIS system, for which no complaint on data protection has been registered to date<sup>125</sup>, and adequate safeguards have been put in place. By contrast, the data implied by sub-option B is more intrusive and it would not substantially contribute to the explicit objective of the measure, which is to facilitate the return of TCNs without a valid travel document. Since sub-option B is more intrusive and no more effective for achieving the identified objectives it could be concluded that the processing of these data is considered disproportionate *if it were to be stored centrally*. **Therefore, the necessity and proportionality of a measure involving storage – either at central level (Option 1.1) or decentral level (Option 1.2) – of a digital copy of the data page of the visa applicants’ travel document in the VIS system would be justified.**

#### *Coherence*

All proposed options and sub-options are coherent with other EU policies also in particular the return policy, as well as the asylum policy. They are also fully coherent with the visa policy and the proposal amending the Visa Code.<sup>126</sup>

Table 11: Overall comparison of policy options (1)

<i>Option</i>	<i>Coherence</i>	<i>Effectiveness in meeting the objectives</i>	<i>Social impacts and fundamental rights</i>	<i>Efficiency (economic costs and benefits)</i>
1.0 Baseline	0	0	0	0
1.1 Digital copy of the travel document in the central VIS				
A Biographical page only	++	++	-/+	++
B All used pages	+++	+++	--/+	-
1.2 Digital copy of the travel document in national systems				
A Biographical page only	+	+	-/+	+

125 See COM(2016) 655 final, page 12.

126 COM(2018)252, Return of migrants is analysed here as a part of visa policy.

B	All used pages	++	++	---/+	-
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## 7.2. Fingerprinting of minors

### *Efficiency and effectiveness*

As stated when describing the impacts in the section 6.1.2, lowering the fingerprinting age of children in VIS meets the objectives, which is why both option 2.1 and 2.2 are considered to be effective. Option 2.1 is more effective because research shows that the fingerprints of children *under* the age of 6 are not as reliable as fingerprints of the children above the age of 6. This scientific finding, coupled with the fact that there is a relatively low number of children affected by abuse of rights phenomena (including trafficking) in this age group (i.e. meaning below the age of 11 years, taking into account the maximum period of validity of a granted visa), means that the option 2.2. is less effective in meeting the objectives, which is reflected in the score for effectiveness in Table 12 below.

From the description of the costs/benefits in section 6.1.2, results that option 2.1 (lowering fingerprinting age to 6) involves much less economic costs than option 2.2 (including all ages), which is fully reflected in the rating of efficiency in the Table 12 below.

### *Social impacts and fundamental rights*

The analysis of fundamental rights impacts (section 6.1.2) showed that the measure includes a trade-off between positive and negative impacts: it would have a positive impact for the protection of the fundamental rights of children, protecting them against human trafficking or protecting the right to family life by reuniting trafficked children with their family members. However, storing such sensitive personal data of a vulnerable age-group would naturally also entail negative impacts, as was duly stated in the analysis. However it was considered that the positive impacts outweigh the negative ones. The rating of the fundamental rights in Table 12 reflects these considerations.

### *Necessity and proportionality*

From a data protection point of view, both options are found to be appropriate, strictly necessary and not excessive for the objective of border checks, by providing the only means available to allow an unambiguous identification of the child at the border or within the territory, both to prevent trafficking but also allowing to identify and return to the family children that had gone missing or were found victims of trafficking.

Option 2.1 – Taking into account the immense positive impact for protecting the right to family life and best interests of the child, this option can be considered a proportional measure under specified purposes and given the strict conditions and safeguards existing on data protection ensuring that the fingerprints are only accessed under the visa and border procedures provided by law and otherwise only used to protect children from trafficking or identify and protect trafficked children and missing children.

Option 2.2 – Since all children are entitled to protection, this option would have a positive impact with regards to the protection of all TCN children under 6 having applied for a visa. However, there are several limitations: the number of potentially affected (i.e. trafficked) children appears to be relatively low, for this age group there is less reliability of the

fingerprints taken and there would be significantly higher practical hurdles in carrying out fingerprinting in a child-friendly and adequate manner for very young children. This hampers the overall effectiveness of the measure: the effectiveness of the measure for all children from 0 to 12 years is lower than for children between 6 and 12 alone. In conclusion, whereas taking fingerprints of children below the age of 6 would still meet the policy objective to a certain degree, it appears to be less proportionate in view of the technical limitations it entails, as well as the relatively low number of children targeted in this age group.

In light of these considerations, the data collected under option 2.1 is relevant and needed to contribute to the first objective of improving the implementation of the common visa policy, whereas the option 2.2 does not reach this threshold.

*Coherence*

Both proposed options are coherent with other EU policies – namely the visa policy, and also respect for the principle of primary consideration of the best interests of the child, which should be taken into account in all EU action. Additionally, option 2.1 presents full coherence with the recent Eurodac proposal which provides for lowering the fingerprinting age for children in asylum procedure or found in irregular migration process from the (current) 14 years of age to 6 years. Taken together, the data registered in the VIS (covering children arriving on EU territory as part of a regular migration process) and Eurodac (covering children arriving with irregular flows or seeking asylum) cover to a very large extent the spectrum of third country national children arriving on EU territory and that could be identified in case they are found as victims of trafficking or other forms of abuse or who had been reposted as missing. To complement this framework, the SIS that contains alerts on missing persons (including children) could be fed with identity information, including biometrics, from the VIS, to support the search operations, in case the child that had gone missing is a TCN under visa obligation.

Table 12: Overall comparison of policy options (2)

<i>Option</i>	<i>Coherence</i>	<i>Effectiveness in meeting the objectives</i>	<i>Social impacts and fundamental rights</i>	<i>Efficiency (economic costs and benefits)</i>
2.0 Baseline	0	0	0	0
2.1 Lowering the fingerprinting age to 6 years	+++	++	++/-	++
2.2 Lowering the fingerprinting age all ages	+	+/0	++/-	--

**7.3. Long-stay visas and residence documents**

*Efficiency and effectiveness*

*Effectiveness:* Ultimately, sub-option 3.4.b (Integrate in the VIS) is the only option that fully addresses the second objective (i.e. information exchange), as storing data on documents and applications would offer migration authorities a complete picture on the situation of the TCN applying for a new document. It would be effective regarding false

documents, including forged documents, as in these cases the information in the database would differ from the information in the document presented to the border guard. And would be effective regarding letting migration authorities know of security issues encountered by other Member States with previous applications or use of the document by the TCN.

Concerning Option 3.3 (the distributed database), it would allow improving security within the EU and provide border guards and officers carrying checks within the territory access to a “white list” of valid documents. However, its complexity and difficulty of implementation, together with the difficulties in delivering high performance searches with such setup, would reduce its effectiveness in addressing the policy objectives.

While taking into account the upcoming Commission proposal to further harmonise the format of the residence cards, the Option 3.2 (further harmonisation of the format) would meet the general and the specific objectives related to checks at external border as it will make it more difficult to forge or counterfeit the document - and thus improve security within the EU. This option would also make it easier for border guards to recognise valid residence document. However it does not meet the specific objective of exchanging information between Member States on third-country national holders of, or applying for, long-stay and residence documents, and cannot fully address the problem at borders either.<sup>127</sup> These considerations are reflected in the scoring of options for effectiveness in Table 13 below.

*Efficiency:* Option 3.2 – Further document harmonisation scores positively for efficiency in securing borders<sup>128</sup>, albeit limited to the documents that are subject to harmonisation and contain security features. However, for this option it must be emphasized that the objective of facilitating the exchange of information for enhancing the security of the Schengen area is not met (which is reflected in the score given to this option for effectiveness).

Option 3.3 – creating a decentralised database – will be complex and overly costly to implement, due to major difficulties deriving from the different governance, legal basis, languages and technical solutions used across national systems. These difficulties could delay implementation by several years. Moreover, it would not leverage on the existing infrastructure of the VIS.

Option 3.4 – (either sub-option a/b) offers significant advantages and a much better cost-benefit. In particular, only this option would allow "triangular verification" (person <=> document <=> system), which has proven to be a successful approach for the efficient tackling of unlawful use of documents through the correct assessment of (i) their validity and authenticity and of (ii) the identity of the holder. It provides a higher level of security than reinforcing the security of documents, as it cannot be affected by material damage (e.g. broken chip in a residence document) or loss of the document. This approach also allows accurate identification (in particular if biometrics are stored in the central database – as explained in section 6.1.3 in the consideration on biometrics) in a less cumbersome

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<sup>127</sup> As described by Frontex: by making documents secure, fraudsters start targeting the previous steps i.e. breeder documents.

<sup>128</sup> Based on the assessment included in the IA of the DG JUST proposal.

manner than using fingerprints stored in the chip. Overall, this option would have a positive societal impact both on EU citizens who would benefit of the additional security of the Schengen Area, and on TCNs who would benefit of an automated and potentially faster border crossing. Furthermore, this option is supported by the public consultation: a majority of the respondents who consider that an EU solution should be given to address the identified information gap would also support a repository of long stay visas and residence documents as part of the already existing Visa Information System, while respecting the principle of separation of data and access rights by the various authorities<sup>129</sup>.

Table 13: Overall comparison of policy options (3)

<i>Option</i>	<i>Coherence</i>	<i>Effectiveness in meeting the objectives</i>	<i>Social impact and fundamental rights</i>	<i>Efficiency (economic costs and benefits)</i>
3.0 Baseline	0	0	0	0
3.2 Further format harmonisation	++	+/-	0/-	+
3.3 Distributed database	+	+	+/----	--
3.4.a Extend the VIS with documents data	+++	++	+/--	++
3.4.b Extend the VIS with documents and application data <sup>130</sup>	+++	+++	++/----	++

Additional benefits of VIS stem from the fact that it is already used and well known by Member States<sup>131</sup> and it serves similar business processes. As part of the new interoperability platform, the inclusion of data in the VIS opens the possibility for detection of multiple identities of TCN applying for one of these documents, and to police identity checks within the territory. With this option, MS would be able to benefit of its search services offered centrally, in a proven, controlled and highly performing manner. It would maximise the re-use of existing infrastructure, including benefitting from ancillary services such as logging, reporting, data quality, statistic extractions, access control etc.

*For border checks:* The central system would be consulted by border guards to verify the documents arriving at the borders against a centralised system and the travel document of the holder (triangular verification). It would simplify the administrative burden, by enabling fast, electronic checks via the central system. It would also reduce the need of bilateral exchanges triggered by doubts on the documents. It would also help efficiently implement the future Carrier Gateway of EES and ETIAS – in the absence of these documents in the system, the gateway would give a false negative as a short stay visa or an ETIAS travel authorisation would not be found for that traveller, thus generating confusion for the carriers, adding to the administrative burden of procedure and potential negative

129 Open public consultation feedback (see Annex 2).

130 "application data" refers to whether a person has applied for a document and what was the outcome of the application process.

131 As regards the particular case of residence cards, which give a right of free movement not only within the Schengen area but in all MS, additional access to the VIS will need to be provided, for the purpose of storing the cards and checking those issued by other MS, also to Bulgarian, Croatia, Cyprus, Ireland, Romania and the UK (to be noted that Bulgaria, Croatia and Romania have already built the national VIS in the preparations to become part of the Schengen area, although they do not have legally the right to access the system for the purpose of processing short-stay visas until a Council Decision on lifting the internal border controls with these countries is taken. Hence, new access to VIS repository on cards would be limited to Ireland and Cyprus.

consequences for the TCN that would then have the burden of proof that they do not require them.

*For migration and security assessment:* By centralising information, this option would mitigate the information gap and support the cooperation among MS during the assessment of new applications, by enabling them to perform upstream checks on the applicant, in particular to assess irregular migration and security risks e.g. by accessing information on previous applications in other Member States, the use made of previously issued documents, or to use VIS's interoperability to other databases to perform basic security checks and detect identity fraud. Additionally, the information on long-stay and residence document holders could support the examination of asylum applications and determining the MS responsible for such applications (similarly to what is already done for short-stay visas in the VIS<sup>132</sup>). Furthermore, the stakeholders' consultation confirmed the need for developing a shared EU repository that would contribute to reducing identity and document fraud, combatting irregular migration, and preventing, detecting and investigating terrorist offences and other serious criminal offences<sup>133</sup>.

#### *Social impact and fundamental rights*

In terms of social impacts and fundamental rights there is a trade-off between increased security for the society and impact on fundamental rights (namely through processing of personal data): by helping to increase security of the EU through information-exchange, the options which meet the objective of information exchange (options 3.3, 3.4.a and 3.4.b) also score high for their social impacts, whereas option 3.2 and the baseline 3.0 do not meet the security objective, so they score much less in terms of benefits on social impacts. As analysed in greater detail in section 6.1.3 under impacts on fundamental rights, the options which include putting personal data in a repository (3.3., 3.4.a/b) will have an impact on fundamental rights. However, already existing and proposed safeguards will minimise these impacts, as is explained in more detail in the next section on the necessity and proportionality of the options. These considerations are reflected in the scores in Table 13. It is important to note that option 3.4.b (centralised repository, with data on applications) scores best in terms of trading off positive social impacts and impacts on fundamental rights (on the other hand, option 3.2 of document harmonisation entails less impacts on fundamental rights, but positive social impacts are all minimized as well).

#### *Necessity and proportionality*

In an area without internal borders, no Member State alone is able to cope with irregular immigration and to cover for the risks to the security of this area, including international terrorism and serious crime. A person may enter the Schengen area using a document issued under national competence by one Member State and circulate freely to the territory of the other Member States. A comprehensive verification of the compliance with EU rules on crossing external borders therefore cannot be ensured by Member States acting alone.

While Member States will retain fully their current competence in issuing long stay visas and residence documents in accordance with national legislation and applicable EU law, in

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132 Articles 21 and 22 of Regulation (EC) No 767/2008.

133 Open public consultation feedback (see Annex 2).

particular data protection rules, storing data on these documents in the VIS would allow Member State authorities to access data on third-country nationals who cross the EU external border with a document issued by another Member State in an easy, safe, secure and streamlined manner, as well as use the data stored on previous applications to take informed decisions on whether the person could be a threat to the security of the Schengen area or an identity or document fraudster.

By reusing the VIS technical setup and infrastructure, the investments necessary are kept to a minimum and will only entail connections between the national systems and the VIS. As regards the former, the national visa systems are already fully interconnected to the VIS, for the issuance of short stay visas. Therefore, only connection of national systems will only be necessary in those cases and for those Member States that have separate national systems for managing residence documents. Therefore the preferred option is also proportionate in terms of costs, taking into account the benefits the system will provide to all Member States in managing the common external border and protecting the area without internal borders.

As regards fundamental rights, including the protection of personal data, the preferred option based on a VIS solution, whose concept is driven by the *privacy by design*, is proportionate in terms of the right to protection of personal data in that it does not require the collection and storage of more data and for a longer period than is currently the case for the same categories of affected TCN in similar processes – short stay visas, ETIAS, EES – and absolutely necessary to allow the system to function and meet its objectives, including what a border guard currently sees when checking a long-term visa, residence card or permit presented at the border. Only personal data that is adequate and relevant for the purposes of the processing would be collected and processed<sup>134</sup>.

Similar to what happens today with all existing EU information systems, the rights of the TCN applying for these documents are affected to a limited extent<sup>135</sup>. These limitations are necessary to achieve the general and specific objectives described in section 4 and so are necessary and proportionate. They will however be accompanied by all the safeguards and mechanisms required for the effective protection of the fundamental rights of TCN concerned, in particular the protection of their private life and personal data will be foreseen and implemented.

Thus, the limitation is justified as the advantages outweigh the disadvantages caused with respect to the exercise of fundamental rights; therefore, the limitation is deemed proportionate.

### *Coherence*

All options (except the discarded status quo baseline 3.0) are coherent with the overarching objectives of EU policies at least to some extent. Option 3.2 on further harmonising the

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134 Biographical and document data would be used to compare with the data of the presented document and to detect forged, counterfeited and stolen blank documents. Decision data would be used by migration authorities to inform their decisions during the application process. Data generated by the repository would be used to structure the database.

135 The CJEU established the criteria for justification of such interference in the context of Regulation 2252/2004 in Case C-291/12 Schwarz v Stadt Bochum, ECLI:EU:C:2013:670.

residence documents is fully coherent with existing and upcoming developments in the area of harmonising documents and securing them<sup>136</sup>. Option 3.3 on the decentralised database is coherent with the general efforts to increase the cooperation between national administrations. Option 3.4 is fully coherent with the EU policy on the gradual introduction of an integrated management system for external borders and on the checks to which persons crossing external borders are subject. Moreover, this option is also coherent with the EU policies in the field of return and asylum, respectively. This is reflected in scoring in the Table 13.

## **7.4. Migration and security checks**

### *Efficiency and effectiveness*

Both proposed options meet the objectives of conducting robust migration/security assessment, whereas the baseline scenario does not guarantee that this objective is uniformly met (as analysed in section 6.1.4). These considerations are reflected in the scoring for effectiveness in Table 14 below. Both proposed options are building upon the costs undertaken for the interoperability proposal (as mentioned in section 6.1.4), which is reflected in their score for cost efficiency in Table 14.

### *Social impact and fundamental rights*

In terms of social impacts and fundamental rights there is a trade-off between increased security (due to more thorough security assessments of TCN) and negative impacts on fundamental rights of the TCN (since their personal data would be subject to new types of processing). Achieving the goal of increased security prevails in this case, since all appropriate safeguards will in place to limit the negative impacts on fundamental rights (as explained in the description of the baseline scenario and further developed below in the section on necessity and proportionality). These considerations are reflected in the score for social impacts and fundamental rights in the Table 14.

### *Necessity and proportionality*

The assessment of whether additional systems should be queried during the assessment of a visa application and whether such searches are proportionate and necessary as part of migration and security risk assessment reveals that the measure is needed to properly assess migratory risk and fraud and to ensure a level playing field across Member States. It is not a disproportionate measure since at least the same amount of checks would need to be carried out on visa applicants as would be done for visa free travellers under ETIAS and very similar to the systematic checks upon entry and exit to which *every* EU citizen is currently subject.

The VIS will be interoperable with other police, judicial and immigration systems in order to cross-check information contained in VIS against information recorded in these systems. From a data-protection point of view, it can be noted that cross-checking data available in the VIS with all information contained in other systems may not be relevant for the VIS

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<sup>136</sup> COM(2018) 212 final, 17 April 2018.

purposes. Therefore as an additional safeguard, provisions will be added to the VIS Regulation defining precisely with which set of limited data a search will be launched against other systems, and include biometrics in order to obtain the most accurate answer and avoid false positives. The Visa Code provisions in this respect will define precisely which information in other systems is relevant to the purposes of these checks and therefore which types of data will have to be returned by the checks, in order to strictly limit the cross-check of VIS data with this information. The existing safeguards in the VIS Regulation and the Visa Code in respect of data processing, fundamental rights and purpose limitation will apply (i.e. the information obtained will be strictly used for the purpose of checking whether the conditions of entry as set out in Article 21(3) of the Visa Code, while refusal of a visa must strictly correspond to one of the grounds laid down in Article 32 Visa Code).

### *Coherence*

The proposed options 4.1 and 4.2 are using synergies created by the interoperability logic; therefore it is fully coherent with other EU existing legislation and proposals in the area of border management. A similar mechanism has been proposed<sup>137</sup> to support the processing of the ETIAS authorisation for visa-free TCN. The introduction of the automated checks and screening rules for TCN subject to a visa obligation would therefore ensure that at least the same level of checks done for visa free TCN and thus ensure coherence between the regime applicable to the two categories of TCN by EU policies.

By enabling authorities to have readily available and streamlined security and migration information on the applicant during the examination procedure, the mechanism of automated checks accompanied by screening rules enables the detection of any irregular migration or security risk early on in the process and thus contributes to the prevention of irregular migration and security risks on EU territory and is thus also coherent with the EU policies in these areas.

Furthermore, views from stakeholders support the introduction of options 4.1 and 4.2. During regular Schengen evaluations, Member States and border management authorities stated they would welcome automatization of the security cross-check against other applications in order to facilitate the border check procedure while enhancing security; additionally to this, introducing screening rules in VIS would allow for an advanced risk assessment<sup>138</sup>.

Table 14: Overall comparison of policy options (4)

<i>Option</i>	<i>Coherence</i>	<i>Effectiveness in meeting the objectives</i>	<i>Social impacts and fundamental rights</i>	<i>Efficiency (economic costs and benefits)</i>
4.0 Baseline	0	0	0	0
4.1 Automated cross-checks	++	++	++/--	+
4.2 Automated cross-checks and screening rules	+++	+++	++/-	+

137 Agreed in trilogues between EP, Council and Commission during March 2018.

138 Schengen Evaluation Report, presented by the Commission in October 2016.

## 8. PREFERRED OPTIONS

### 8.1. Copy of the travel document

The preferred option to emerge from this study is **Option 1.1.A – Centralised storage of a digital copy of the bio-data page of the visa applicants’ travel document in the VIS.**

The contracted study concluded that sub-option B is more intrusive and no more effective for achieving the identified objectives and that as a result, the processing of the additional data (all used passport pages) was considered disproportionate if it were to be stored centrally.

### 8.2. Fingerprinting of minors

The preferred option is **Option 2.1 – Lowering the fingerprinting age to 6 years.**

Option 2.1 (lowering fingerprinting age to 6 – thus covering visa holders as of 11 years of age, which is at the start of the age segment, 12 to 17 years of age, which is the most affected by trafficking and other abuse of rights phenomena) contributes to the policy objectives as identified; it facilitates the protection of these children while traveling with a visa and after arrival in the Schengen area, while attaining necessity and proportionality thresholds.

### 8.3. Long-stay visas and residence documents

**Option 3.4.b – Extend the scope of the VIS to include long-stay visas and residence documents – Store also data on all applications** is the preferred option since it satisfies the criteria of necessity and proportionality, while also meeting the criteria of coherence, effectiveness and efficiency more than any other alternative. While option 3.2 – further harmonisation of residence documents – is not the preferred option for this IA, the analysis carried out recognises its significant contribution to the achievement of the specific objective related to an increased security at borders. Ideally, all documents allowing a TCN to cross the external border, stay and/or reside in the territory of the Member States should be harmonised, to facilitate border checks. Exchanging information on TCN applying an entry and residence document ensures upstream verification of the person and its bona fide intentions, while harmonisation of the issued documents ensures downstream proper verification at the border or within the territory. Therefore, important synergies exist between these two options, taking into account in particular the Commission legislative initiative to harmonise and secure the residence cards, which would advance significantly the further harmonisation of documents and thus further contribute to the objective of an increased security at borders.

Through facilitating the systematic and better exchange of information among Member States on TCNs holding or applying for long stay visas and residence documents, the second specific objective would result in **enhancing the internal security of the Schengen area**, thus closing the identified information gap. When records of long-stay or residence documents are placed in a central system and accessible to all relevant Member State authorities, each Member State would be able to make a more precise and impartial

assessment of the security risk, based on the records found in the system while checking TCNs at the border crossing points or assessing the application.<sup>139</sup>

The second specific objective also presents a dimension of **support to fraud detection** linked to obtaining authentic documents on the basis of false breeder documents,<sup>140</sup> as better information exchange between Member States could help identify these cases and pass the information to all Member States. Currently if a person tries to apply to a long-stay visa or residence document in one MS with falsified application documents, there is no systematic ways for other MS to know about the situation of this TCN.

In addition, facilitating the better and systematic exchange of information among MS would also minimize administrative burden and overcome the language barrier when contacting another MS to verify authenticity of the TCN's document..

#### **8.4. Migration and security**

The preferred **Option is 4.2 – Automated cross-checks + screening rules**. This option meets the objectives by allowing for proper migratory and security checks for TCN to be conducted uniformly across the EU. Furthermore, the option puts the recently proposed interoperability initiative to practical use, by making interoperable IT-systems work together. The selected option is necessary and proportionate to meet the objectives, since the trade-off between negative impacts on fundamental rights and the gains in terms of improved security is offset by tight safeguards (already existing and newly developed as part of the proposed option).

#### **8.5. REFIT (simplification and improved efficiency)**

The 2016 REFIT evaluation of the Visa Information System (VIS) looked into the legal framework of the VIS and examined whether this instrument is fit for purpose, delivers on its objectives at reasonable cost, is relevant, coherent and has EU added value. The evaluation shows that the VIS was effective in meeting its objectives.

The evaluation concluded that the **VIS meets its objectives and functions well**. The VIS's benefits were found to outweigh its costs, and the system remains relevant and continues to have EU added value. No specific problems of regulatory changes were identified, or administrative burden that needs to be cut. The Report recommended that the **VIS be maintained and further developed** to respond to the new challenges in visa, border and migration policy.

The measures proposed by the Commission under the present initiative entail both measures addressing the problems identified in the evaluation, as well as new initiatives, that extend the scope of the VIS beyond its current application (see notably topics 1 and 3 addressed under the present IA).

As regards the costs and benefits provided by the measures analysed by the current IA, they are presented in the tables in section 2 of annex 3. As regards the benefits, for a vast

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118 As regards residence cards, it must be noted that application data will not be stored, as the sole requirement for issuing this document is a proof of a family link with a mobile EU citizen.

119 E.g. birth, marriage and death certificates.

number of areas impacted, these are non-quantifiable by nature and so figures could not be provided.

As regards the costs for additional technical measures which will be dealt with by the proposal but which were not identified with a major economic, social or fundamental rights impact (and are thus not analysed by this IA), an estimate of the costs entailed for the central system to operate the proposed modifications was made by eu-LISA in its 2017 "study on VIS developments" and are presented in the tables in Annex 4.

## **9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?**

The Commission will ensure that systems are in place to monitor the functioning of the VIS and evaluate its main policy objectives. Four years after the start of the application of the revised VIS Regulation and every four years after, the Commission will submit a report to the European Parliament and to the Council. The report will present an overall evaluation of the functioning of the system, including its direct and indirect impacts and practical implementation on fundamental rights. It should examine results achieved against objectives, assess the progress with respect to the four main problem areas, and assess the continuing validity of the underlying rationale and any implications for future options.

The table in Annex 6 provides a list of operational objectives, its detailed performance indicators, sources and methods for data collection. The monitoring will be facilitated through three main channels. The proposal is introducing a central repository of data for the purposes of reporting and statistics which will allow for collecting data without causing an additional administrative burden. The monitoring indicators are essentially expected to be collected on an ongoing basis by the systems or technical components themselves. This will provide precise data on detected use of fraudulent documents, system security checks and successful hits, and identification for the purpose of a return/readmission procedure. Secondly, Member States and Europol will prepare annual reports on the effectiveness of access to VIS data for law enforcement purposes containing information and statistics on the consultation including the type of terrorist or serious criminal offence, the number of requests for access to the VIS and cases which have ended in successful identification, including child TCN. In addition to this, consultations with stakeholders, such as FRONTEX and Member States' visa-issuing authorities, will compliment monitoring activities at the EU level and provide the Commission with their input on the impact of the proposed policy measures.

## ANNEX 1: PROCEDURAL INFORMATION

### 1. Lead DG, Decide Planning/CWP references

The lead DG is Directorate-General for Migration and Home Affairs (DG HOME). The Decide Planning reference is 2017/HOME/208. The initiative is mentioned in the Commission Work Programme for 2017 – COM(2016) 710 final, Annex 2, N° 18. Visa Information System, and in the Commission Work Programme for 2018 – COM(2017) 650 final, Annex 1, N° 20. Delivering on the EU Agenda on Migration.

### 2. Organisation and timing

Work to prepare the draft proposal and the impact assessment began in 2017. The Interservice Steering Group for the impact assessment was composed of the representatives from JUST, SG and SJ. Several meetings were held between 15 March 2017, and 15 March 2018 to discuss the ToRs, interim and final reports of the individual studies, as well as the draft COM IA Report, with numerous written consultations in between.

### 3. Consultation of the RSB

The draft Impact Assessment was submitted to the Regulatory Scrutiny Board on 16 March 2018. The Board examined the Impact Assessment on 28 March and delivered its opinion on **XXX**.

### 4. Evidence, sources and quality

This initiative builds on the evaluation of the VIS<sup>141</sup> which analysed its performance as a system, its implementation in practice and the extent to which it has reached its policy objectives, including its added value to the common visa policy. On the basis of this evaluation, the Commission issued recommendations regarding the need for revision or extension of the VIS functions. Despite the very good performance of the common system for storing, processing and exchanging visa data, the evaluation demonstrated a need to further develop the system in order to respond to new challenges in visa, border and security policies. The evaluation further demonstrated a need for a number of improvements in particular in relation to monitoring of data quality and production of statistics.

In order to collect widespread evidence, two open public consultations were launched by the Commission. The Schengen evaluation and monitoring mechanism consisting of the on-site visits and questionnaires also provided the Commission with valuable first-hand evidence and the opportunity to carry direct stakeholder consultations right at the borders, the

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141 Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure (COM(2016) 655 final).

Evaluation of the implementation of Regulation (EC) No 767/2008 of the European Parliament and Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (SWD(2016) 328 final); Executive Summary (SWD(2016) 327 final).

in-depth knowledge has been exploited wherever possible. Additional specific data, including opinions and testimonies of directly involved stakeholders, were collected in the scope of studies carried out by external contractors.

A specific study was commissioned in order to gather additional data on the necessity, proportionality and implications of lowering the fingerprinting age of children and of storing a digital (i.e. scanned) copy of the travel document in the VIS. Findings of the study on technical feasibility of all possible VIS developments carried out by eu-LISA during November 2016 and February 2017 were also taken into account. Furthermore, a Feasibility study on Integrated Border Management (IBM) for persons not recorded in EES and a study on legal analysis on the necessity and proportionality of extending the scope of the VIS to include data on long stay visas and residence documents have been conducted.

The data collection process was designed to meet the information needs; however, several limitations were encountered in the data collection process, which have implications for the ensuing analysis. While Member States collect various data on two topics under investigation, methods and definitions can differ significantly across Member States, thus making data difficult to compare. Moreover, where collected, the data generally do not distinguish between cases of TCNs who have entered on a visa and those who have entered the EU via irregular channels. Also available data often do not distinguish between the different age categories.

For the quantification of key impacts, a methodology was developed to assess the main changes that can be expected from the proposed measures relative to a continuation of the baseline scenario. The quantitative analysis was, however, conducted separately for each policy area, and therefore the presented quantification does not include considerable cost reduction aspects, such as economies of scale and potential investment overlaps, which would finally result from implementing the combination of preferred policy options.

The calculation of costs incurred by the different stakeholders is mostly based on a simplified estimation model relating to assumptions on the amount of time that might be reasonably taken to perform the additional activities, which would be required to comply with the proposed changes. The evidence base underlying these assumptions draws from the results of the in-depth interviews with Member States' competent authorities and consular staff, in combination with available statistics.

## ANNEX 2: STAKEHOLDER CONSULTATION

In preparation of the revision of the Visa Information System legal basis and the accompanying Impact Assessment, the Commission services conducted directly and indirectly through its contractors a number of surveys and consultations. The objectives were to gather and analyse views, experience and suggestions for better practice from the main stakeholders in order to tackle the identified problem drivers in the most comprehensive manner. Additionally, findings of the previous studies, documents referring to one of the four policy aspects covered in this Impact Assessment, related consultations and Schengen evaluation have been taken into account. The summary of the stakeholder consultations is presented below following the four respective policy aspects.

The European Commission also launched two open public consultations on (1) lowering the fingerprinting age for children in the visa procedure from 12 years to 6 years and (2) extending the scope of the Visa Information System to include data on long stay visas and residence documents for a period of 12 weeks. The consultations were conducted through an online questionnaire published on the internet in all EU official languages, with the exception of Gaelic. The results of the open public consultations are summarized below.

The Inception Impact Assessment was published on the European Commissions' webpage on 28 March 2017 with the feedback period from 29 March 2017 to 26 April 2017. No feedback was received.

### 1. Stakeholders

In the course of the study on lowering the fingerprinting age for children and on storing a digital copy of the visa applicants' travel document in VIS<sup>142</sup>, a number of interviews were conducted with following entities:

- EU Agency of Fundamental Rights (FRA)
- European Data Protection Supervisor (EDPS)
- eu-LISA (and VIS Advisory Working Groups)
- Europol
- Frontex (EBCG)
- Missing Children

The study team also performed field visits to 4 third countries. Interviews were carried out with consulates of the pre-selected Schengen States. The following four countries were visited:

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<sup>142</sup> Feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicants' travel document in the Visa Information System (VIS).

- The mission to Rabat, Morocco took place from 13 – 15 November, 2017. A total of 9 interviews were carried out with a combination of MS consulate staff, ESPs and the EU Delegation.
- The Nigeria mission took place from 26 – 29 November 2017. A total of 6 interviews were carried, including with 4 consulates, one ESP and the EU Delegation to Abuja.
- The mission to Moscow, Russia took place from 4 – 6 December, 2017. A total of 8 interviews were carried out, including 6 with consulate representatives, 1 with immigration liaison officers and 1 with the EU Delegation.
- The mission to Istanbul, Turkey took place from 20 – 23 November, 2017. A total of 7 interviews were carried out with consulate officials and one ESP.

In addition to the field visits, an intensive interview programme in 8 Schengen Member States (BE, DE, EL, ES, FR, IT, LT, PL) was conducted in order to gather the necessary inputs. Consulted stakeholders represented departments responsible for managing National VIS connection, ESPs (where relevant), migration authorities<sup>143</sup>, consular affairs departments<sup>144</sup>, border police authorities, return authorities, law enforcement authorities dealing with terrorism and/or serious crime, National Data Protection Authorities, Ministry/department of the rights of the child, Anti-trafficking authorities, and Ombudsperson for Children.

The results of the stakeholder consultation revealed that Member States' authorities overwhelmingly agree that if digital copies of scanned travel documents were systematically available and accessible to the relevant authorities, it would:

- greatly reduce the burden to confirm this category of TCNs' identity and facilitate the return process;
- reduce delays associated with ad hoc communications and exchange between Member States' authorities and the consulates; and
- eliminate inefficient procedures involved with retrieving, scanning, zipping and coding hard copies.

An annual average of 1,100 to 17,445 visa overstayers was detected in the consulted Member States between 2014 and 2016.<sup>145</sup> As a percentage of visas issued, the 6 Member States for which data was available indicate a rather consistent average of 2%. Indeed, one Member State estimates that the number of detected overstayers represents just 40% of all visa overstayers (i.e. the undetected population). According to stakeholders interviewed, around 90% of visa overstayers eventually become subject to return proceedings, and it is estimated that 10% to 20% of these cases involve TCNs without travel documents at the time of apprehension; and that more than half will not be executed due to Member States' inability to obtain satisfactory evidence to prove the nationality of the third country national in question.

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143 Typically: department of Interior Ministry (e.g. DE), Security/Justice (NL) or Work (FR).

144 Typically: department from MFA.

145 MS responses: Belgium, France, Germany, Greece, Lithuania and Poland.

According to interviewed Member States' authorities, the effort involved in confirming the identity of TCNs who no longer possess a valid travel document, or who fail to produce it on request, can be significant in the current situation. In such cases, Member States need to obtain a digital copy of the visa holders' travel document that provided the basis for issuing the visa from the issuing Embassy. Regardless of which route of communication is utilised, interviews with Member States and Consular officials indicate that the average response time on the part of the consulates varies and is highly dependent on the workload at the respective consulate. As a result, return procedures may be delayed by 2 days during low-seasons, and up to 2 weeks during busier periods. Whereas the proposed policy options would effectively eliminate this step enabling Member States to directly or indirectly search in the VIS for the required documents.

Moreover, in the experience of several authorities interviewed, the consulates' and border authorities' staffs are not immune to making mistakes when it comes to translations. These problems are multiplied in the event of court proceedings, or if other Member States require the information. Three Member States indicate that personal data used for a query does not always return any matches because the TCN received a visa in another Member State using different personal data. The consultations also revealed further unnecessary administrative burdens related to the current practice of retrieving, scanning, zipping and coding hard copies. The workload associated with each request may vary depending on the number of archived files at the consulate, the accessibility of the files, etc. For example, one Member State indicated that the paper copies are not destroyed by the diplomatic representations, but rather continue to pile up, thus adding to an increasingly cumbersome retrieval process.

As for lowering the fingerprinting age for children, according to the interviewed Member States' authorities the main benefits of the proposed policy measure reside in unambiguously identifying these children allowing for:

- (i) family unification of children found unaccompanied with parents, family or care givers within and outside the Schengen area;
- (ii) verifying the family relationship between a child and adults presenting themselves as parents or guardians;
- (iii) determining which Member State is responsible for examining an application for international protection under the Dublin Regulation; and
- (iv) preventing visa fraud or irregular migration involving children.

In the current legislative context it was impossible for interviewed stakeholders to have readily available data on this phenomenon; however, stakeholders' testimonies did reveal example cases and suggested potential benefits of the proposed initiative.

A general statement of one Member States' authority summarised the initiative as following: *“the optimization of identification procedures for children at risk, irrespective of where they are located, has decisive impact, on the one hand for the protection of children on the other hand for the prevention of further victimization and ultimately the consolidation of the sense of security among the public”*.

Field visit in Morocco did not allow to obtain conclusive information on the issue of lowering the age for taking fingerprints. Interviewees in Turkey noted that the proposed measure would have more impact when fingerprints were taken and checked at Schengen borders.

On the contrary, lowering the fingerprinting age of children was unanimously considered a positive measure by all consulates and interviewees during the field visit in Nigeria, and apparently would not take much additional effort as it may take one to a few minutes per child to process the fingerprints. The necessary equipment is already available. It would not be necessary to create separate booths for this purpose, as experience shows that children are generally excited to ‘do what the adults do’ and want to give their fingerprints eagerly.

The interviewees in Russia were not aware of cases of child trafficking, smuggling, or related trends of TCNs who enter the EU on a Schengen visa, all but one Member State are in favour of the measure. As one interviewee noted, *the Member States should not be reluctant to increase the arsenal of tools available for the purposes of protecting children*; thus, various databases, authorities and countries shall be coordinated to be effective.

*Example case indicated by two interviewees:*

*A family of three from the North Caucasus applies for a Schengen visa in a Schengen Consulate. The family consists of the two parents and their 4 year old child. The family travels to the EU and, before the Schengen visa expires, the parents return to their country of origin, yet leave the child with extended family residing in one of the Member States. The child then applies for asylum / residence as an unaccompanied minor, whose identity cannot be established via the VIS because fingerprints were not taken (and the parents did not leave the passport with the family, or they fail to produce it on request). After some time, once the residency is granted, the parents apply for a family reunification visa and move to the Schengen Member State to receive permanent resident status. It is expected that this type of case is an increasing phenomenon, based on the observations of the interviewees; however none have concrete statistics to back this up.*

In the course of feasibility study on including additional documents into the VIS<sup>146</sup>, stakeholders were consulted via a questionnaire sent to the Member States in May 2017. The questionnaire was divided into five sections: a general set of questions on the current situation at external borders, the main added value for the repository and its main uses and four sets of questions focusing on the documents analysed (“as-is” situation, national repository, situation at the borders, data included...). 17 Member States answered to the survey; additionally, another 21 answers to a European Migration Network survey sent in April 2017 were also taken into account.

All Member States answered that the repository would be useful/very useful, in particular for border control purposes.

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146 Integrated Border Management (IBM) - Feasibility Study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits, Phase: Analysis of Options.

Table 1: Answers from MS about the possible objectives for the repository

	Objectives of the repository	Importance <sup>147</sup>
1	Facilitate border checks	3.75/4
1.a	Authentication of the document	3.8/4
1.b i)	Determining that the TCN is the rightful owner of the document	3.8/4
1.b ii)	Identification of the document's holder using biometric data	3.7/4
2	Assess migration risk	3.1/4
2.a	Access to the history of valid and previously issued/withdrawn documents	3.3/4
2.b	Access to the history of denied applications	3.3/4
3	Support investigating a serious and organised crime	3.4/4

Additionally, on the utility to include the different documents in the repository, the Member States replied the following:

Table 2: Preliminary table summarising the MS questionnaire on the added value of the documents

Documents	Average score <sup>148</sup>
Long-stay visas	3.7/4
Residence permits	3.9/4
Residence cards	3.8/4
Local Border Traffic Permit	2/4

One Member State also included an additional objective in the questionnaire: *support to the decision-making process for asylum authorities*. These authorities could use the biometric data to check if a TCN applying for asylum is known as a holder of a document issued by another country. This practice is of common use with the information contained in the VIS (art. 22 of the VIS Regulation), so reusing the system would allow for this objective to be met with less implementation complexity.

The questionnaire from January 2018 revealed that all Member States have detected cases of false/counterfeit/forged long-stay visas, residence permits and residence cards issued by other Member State; documents and impostors being mostly counterfeit. Visual inspection, verification of the documents' security features and checks against SIS are the most common ways to check its authenticity at the border; whereas, only 5 out of 16 Member States use passive authentication to verify residence permits and only 6 out of 13 residence cards. When it comes to contacting other MS, the most common tools are National Contact

147 From 1 to 4; 4 being the best score.

148 From 1 to 4; 4 being the best score.

Points (11/12), emails (11/12), followed by telephone (7/12), SIRENE (6/12); some Member States noted that they contact the issuing embassy if necessary. Additionally, some Member States argued that the major obstacles of contacting other MS are the language barrier and poor reachability between some Member States. The majority of responding MS (12 out of 15) noted that there is the lack of shared information on the long-stay visas, residence permits and residence cards that hurdle day-to-day activities; this is mostly seen for border control checking residence permits and for processing a new application of long-stay visas and residence permits.

A majority of responding Member States (13 out of 16) answered that an EU legislative response is needed for the extension of the VIS to long-stay visas, residence permits and residence cards, two MS noted that that a non-legislative response at EU level would suffice (better use of existing tools), and one MS abstained. The proposed legislative option to extend the scope of the VIS to include long-stay visas and residence documents was rated highest score by the responding Member States.

The Schengen evaluation and monitoring mechanism consisting of the on-site visits and questionnaires provides the Commission with the first-hand evince on weaknesses of the Schengen acquis application by Member States and direct stakeholder consultation right at the borders. One of the main findings of the evaluation presented by the Commission in October 2016 was the low quality and insufficient scope of data in VIS. Moreover, verifying authenticity of the TCNs' documents and performing systematic security and risk checks against other applications and national databases revealed to be an additional administrative burden; especially concerning the current migration flows and security situation at the external borders. The Member States and border management authorities would therefore welcome automatization of the security cross-check against other applications in order to facilitate the border check procedure while enhancing security; additionally to this, introducing screening rules in VIS would allow for an advanced risk assessment.

## 2. Open public consultation

The European Commission launched an open public consultation on lowering the fingerprinting age for children in the visa procedure from 12 years to 6 years on 17 August 2017 which closed on 9 November 2017 and attracted a total of 25 responses. 15 respondents replied as individuals and 10 in their professional capacity or on behalf of an organisation.

The respondents didn't agree whether children should be submitted to the same procedures when applying for a Schengen visa as adults; however, 60% of respondents would support lowering the fingerprinting age<sup>149</sup>. A majority of respondents consider fingerprinting children applying for a short stay visa, by helping with their identification, necessary or useful to address or prevent – trafficking, child abduction, children going missing, irregular migration, visa fraud, and identity fraud. More than a half of respondents would consider specific or additional protection safeguards in place when collecting, biometric/fingerprint data of third country national children<sup>150</sup>. Finally, the majority of respondents agree that technological developments, including on the collection and use of biometrics, could contribute to and should be used to enhance the protection of children<sup>151</sup>.

Table 3: To what extent do you consider that fingerprinting children applying for a short stay visa, by helping with their identification, is necessary or useful to address or prevent?

Number of replies (n=25)	Necessary and very useful	Useful	Very useful, but it can be achieved through other means	Not useful
Child trafficking	12	7	4	2
Child abduction	12	5	4	4
Children going missing	12	7	4	2
Irregular migration	12	5	2	6
Visa fraud	10	7	5	3
Identity fraud	11	6	4	4

The open public consultation on extending the scope of the Visa Information System (VIS) to include data on long stay visas and residence documents was opened from 17 November 2017 to 09 February 2018. The consultation attracted a total of 28 replies out of which 19

149 Open public consultation feedback: 24% as of birth, 36% as of 6, 20% as of 12, 20% as of 18 (n=25).

150 Open public consultation feedback: 52% yes, 36% no, 12% no views (n=25).

151 Open public consultation feedback: 44% fully agree, 36% partly agree, 4% neither, 16% partly disagree (n=25).

respondents replied as individuals and 9 in their professional capacity or on behalf of an organisation.

86% of respondents agreed with the identified information gap<sup>152</sup> (i.e. *currently Member States do not share information on long stay visas and residence documents they issue with other Member States*) that leads to problems in management of external borders and irregular migration within the EU. A majority of respondents noted that it is necessary to share the data contained in long-stay visas, residence permits and residence cards among Member States authorities in order to allow their verification at the border and within the territory of the Member States. A shared EU repository is necessary first and foremost to combat irregular migration according to the most of respondents (92%), followed by better informing visa and migration authorities for an authorization to enter EU territory by a third-country national (89%).

Full sharing of information between Member States' authorities in order to enable them to check their authenticity and validity was selected as the most appropriate mean to address the gap by 55% of respondents, better cooperation between national authorities by 29%, and reinforcing security features of the documents by 9%. As for a proper EU tool to address the identified gap, 52% respondents support a repository of long stay visas and residence documents as part of the already existing VIS, followed by 35% respondents in favour of storing long stay visas in the VIS, together with short stay visas and creating a separate new instrument to store residence documents. Furthermore, the stakeholders consultation revealed that the public considers a shared EU repository necessary for reducing identity and document fraud<sup>153</sup>, combatting irregular migration<sup>154</sup>, better informing visa and migration authorities as to the history of previous documents for an authorization to enter EU territory by a third-country national<sup>155</sup>, and preventing, detecting and investigating terrorist offences and other serious criminal offences<sup>156</sup>.

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152 Open public consultation feedback: 61% fully agree, 25% agree to an extent, 11% mostly don't agree, 3% don't agree at all (n=28).

153 Open public consultation feedback: 75% fully agree, 4% agree to an extent, 7% mostly do not agree, 4% do not agree at all, 4% do not know (n=28).

154 Open public consultation feedback: 83% fully agree, 9% agree to an extent, 4% mostly do not agree, 4% do not agree at all (n=23).

155 Open public consultation feedback: 75% fully agree, 11% agree to an extent, 4% do not agree at all, 4% do not know (n=28).

156 Open public consultation feedback: 61% fully agree, 18% agree to an extent, 7% mostly do not agree, 4% do not agree at all (n=28).

### ANNEX 3: WHO IS AFFECTED AND HOW?

#### 1. Practical implications of the initiative

##### 1.1. Including a copy of the travel document in the VIS

<i>Who?</i>	<i>How?</i>
Citizens/Consumers	The additional time that would be spent per <u>applicant</u> / application for scanning the copies may result in longer wait times and fewer appointment slots per day.
Administrations	<u>Consulates and ESPs</u> will be required to carry higher workload per application. The consulates will, however, benefit from the reduced number of supporting documents assistance requests.  <u>Migration and return authorities</u> will benefit from the reduced workload associated with contacting the consulates and obtaining the digital copy of the visa applicants' travel document. As a consequence, the return procedure will be more cost and time-efficient.
Businesses	No direct implications.

##### 1.2. Lowering the fingerprinting age for children

<i>Who?</i>	<i>How?</i>
Citizens/Consumers	<u>Children</u> will be required to provide fingerprints; additional time needed for taking the fingerprints might bring negligible additional costs to their <u>parents</u> . In the current situation, children already need to join their parents at the consulate or the ESP in order to apply for a visa for them.
Administrations	<u>Consulates and ESPs</u> will bear additional costs resulting from higher workload per applications.  <u>Member States' authorities dealing with trafficked/missing children</u> will benefit from higher efficiency when identifying/verifying TCN unaccompanied children found in the Schengen area.
Businesses	No direct implications.  Change in travel behaviour, and hence impact on businesses in the <u>travel and tourism industry</u> , is expected to be negligible.

##### 1.3. Repository of long-stay visas and residence documents

<i>Who?</i>	<i>How?</i>
Citizens/Consumers	<u>Third country nationals</u> who are holders of the concerned documents will benefit from smooth a quick border checks.
Administrations	<u>Border management and law enforcement authorities</u> will have an access to data on concerned documents and therefore will be able to verify its

	authenticity and status in a time efficient manner. <u>Migration and consular authorities</u> will be able to better consult the history of applicants' documents and/or decisions on applications in other Member states.
Businesses	No direct implications.

#### 1.4. Migration and security checks for when processing applications of visa required TCN

<i>Who?</i>	<i>How?</i>
Citizens/Consumers	<u>Visa applicants</u> will benefit from a faster visa application procedure.
Administrations	<u>Migration and consular authorities</u> will benefit from automatic checks of other databases which are currently conducted manually.
Businesses	No direct implications.

## 2. Summary of costs and benefits

The tables below summarise the costs and benefits for the preferred option. Given the lack of available data, the tables have been filled to the extent possible.

<i>I.a Overview of Direct Benefits – Preferred options</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Savings in administrative costs (Migration and return authorities)	€ 3,2 m – € 12,7 m	Migration and return authorities will not be required to contact the consulates when obtaining copies of travel documents.
Savings in administrative costs (Consulates)	€ 0,7 m – € 2,8 m	Consulates will benefit from the reduced number of supporting document assistance requests from migration and return authorities.  (€ 366 – € 1,462 per consulate)
Combatting identity theft	Not quantifiable due to the scarcity of data	Administration will be provided with an effective tool to verify identity of children.
Reduction of child trafficking	Not quantifiable due to the scarcity of data	The proposed measure will have a restrictive impact on traffickers coercing children to travel on a visa not theirs.
Protection of children	Not quantifiable due to the scarcity of data	Authorities dealing with trafficked/missing children will be able to identify/verify TCN unaccompanied children more effectively.
Improvement of the border management	Not quantifiable due to the scarcity of data	Border management and law enforcement authorities will benefit from facilitated

		document checks.
Reduced workload related to security screening	Not quantifiable due to the scarcity of data	Consulates and migration authorities will primarily benefit from the automatic checks against other databases.

<i>1.b Overview of Indirect Benefits – Preferred options</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Reduced delays in return procedures	€ 46,3 m – € 92,6 m	Reduced delays in return procedure will help to decrease cost related to pre-removal detention centres, subsistence and other relevant costs.
Executing a higher proportion of return decisions	€ 6,7 m – € 32,1 m	The proposed measures will provide a reliable means to systematically present evidence of a TCN visa overstayers' nationality, thus facilitating the execution of return decisions.
Family (re)unification	Not quantifiable in principle	A record stored in the VIS might help to reunite children who are found unaccompanied in the Schengen area with parents, family or care givers.
Verifying the parental/ guardian relationship	Not quantifiable in principle	Fingerprints of children in the VIS would allow for verifying the claimed relationship between a child and adults presenting themselves as parents or guardians.
Facilitating Dublin and asylum examination	Not quantifiable due to the scarcity of data	Taking fingerprints of children might facilitate the application of the Dublin Regulation, which determines the Member State responsible for processing an asylum claim.
Right to move and reside within the EU	Not quantifiable in principle	Third country nationals will benefit from smooth and quicker border checks.
Facilitated visa application procedure	Not quantifiable due to the scarcity of data	Visa applicants and consulates will benefit from more efficient security screening and thus faster procedure.
Higher security	Not quantifiable in principle	Societies at large will benefit from higher security resulting from more effective

		protection of external borders.
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The quantitative analysis was conducted separately for each policy area. The bellow presented overview of costs does not therefore take into account considerable cost reduction aspects, such as economies of scale and potential investment overlaps, which would finally result from implementing the combination of preferred policy options.

<i>II. Overview of costs – Preferred option (thousands EUR)</i>							
Preferred options		Citizens/Consumers		Businesses (ESPs)		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
1.1.A	Direct costs	-	-	6,708	5,250	3,325 – 4,000	375 – 560
	Indirect costs	-	-	-	-	-	-
2.1	Direct costs	-	-	-	44.6 – 223	147.4	7.6 – 38
	Indirect costs	-	-	-	-	-	-
3.4.B	Direct costs	-	-	-	-	10,100 – 12,120	2,400 – 3,600
	Indirect costs	-	-	-	-	-	-
4.2	Direct costs	-	-	-	-	10,000	3,000
	Indirect costs	-	-	-	-	-	-

## ANNEX 4: REFIT

Baseline of 100M records	One-time cost	SV	SW	H W	Maintenance for 1 year
G1 – Integration of VIS Mail into VIS	from € 4,030,000.00 to € 4,840,000.00	100%	0%	0%	from € 320,000.00 to € 480,000.00
G2 – Support for facial image recognition	from € 17,265,000.00 to € 20,715,000.00	35%	25%	40%	from € 1,850,000.00 to € 2,780,000.00
G3 – Searching with latent fingerprints	from € 5,250,000.00 to € 6,300,000.00	60%	30%	10%	from € 630,000.00 to € 945,000.00
G4 – Reporting and statistics engine	from € 6,090,000.00 to € 7,310,000.00	40%	50%	10%	from € 535,000.00 to € 800,000.00
G5 – Data quality indicators	from € 1,500,000.00 to € 1,800,000.00	100%	0%	0%	from € 120,000.00 to € 180,000.00
G5 – Central storage of scanned passports	from € 3,325,000.00 to € 4,000,000.00	20%	0%	80%	from € 375,000.00 to € 560,000.00
G5 – Support for the national visa	from € 10,100,00.00 to 12,120,000.00	55%	15%	30%	from € 2,400,000.00 to €3,600,000.00
G5 – Monitoring of service health and availability	from € 800,000.00 to € 960,000.00	80%	0%	20%	from € 65,000.00 to € 100,000.00
G5 – Remaining changes	from € 1,390,000.00 to € 1,670,000.00	100%	0%	0%	from € 110,000.00 to € 165,000.00

\*Table with summary of estimated costs provided in the feasibility study on "VIS Evolutions" of July 2017 by eu-LISA.

As regards the benefits for implementing these measures, they are non-quantifiable and summarised in the table below:

<i>Description</i>	<i>Comments</i>
Possibility to store copies of the travel document in the VIS (discussed as <b>problem 1</b> )	Cutting the high administrative burden for return and consular authorities in return procedures.
Lowering the age limit for collecting fingerprints of children to 6 years of age (discussed as <b>problem 2</b> )	Lowering the age limit, whilst providing for robust fundamental rights safeguards and protection measures, would enable easier access for child protection authorities to an age group that is at a high risk of trafficking.
Information on national long-stay visas registered in the VIS (discussed as <b>problem 3</b> )	Border management and law enforcement authorities will be able to verify the authenticity and status of these documents in a more time efficient manner, alleviating the administrative burden for them. Migration and consular authorities will be able to better consult the history of applicants' documents and/or decisions on applications in other Member states, alleviating the administrative burden when performing such checks.
Interconnections between the various systems (discussed as <b>problem 4</b> )	Cutting the administrative burden for authorities performing checks on migration and security risks by using existing

	interoperable IT-systems more efficiently.
Possibility for eu-LISA to use anonymised (alphanumeric and) FP for testing purposes (similar to Article 5 <i>Operational management</i> of Eurodac Proposal <sup>157</sup> )	Improved performance as a result of testing will benefit all end-users of the system.
Extended responsibility of eu-LISA in generating/ publishing the statistics for each system as well as on data quality reports, including transfer of statistics reporting obligation on visas from COM to eu-LISA, by establishing a central data repository/warehouse.	Easier access to reliable statistics for all stakeholders concerned, replacing the current system of manual gathering and processing of annual statistics by COM and MSs. Providing MS, COM and EU agencies with more information for better evidence-based decision making.
Change of the VIS back-up system into active/active , Shared backup infrastructure, centralised system continuity management	Updating the legislative framework: by enhancing the business continuity aspect of the system, possible risks for all stakeholders will be mitigated.
Measures improving the data quality	Rules aimed at improving quality would ultimately help all authorities that are using VIS as end-users, most notably by reducing the risk of error and not having to resort to cumbersome manual procedures; costs related to managing complaints from data owners or paying fines related to data errors will be reduced.
Integration of VIS Mail into the VIS, also with regards to necessary messages/notifications	Reducing the administrative burden by enabling a quick and reliable way for MS to get informed through VIS if certain visas are granted.
Possibility to search in the VIS/BMS with latent (partial) fingerprints	The new functionality would enable a new service (flat FP search for wanted individuals) leveraging on an already existing system – without impacting current workflows and without affecting system performance, resulting in a net gain for end-users.
Obligation for the MS to register the authorities in the VIS (Consular posts, central authorities etc.) with access to the VIS.	Strengthening oversight: Currently, a list of authorities having had an access to the VIS in the previous day is generated when such an authority is not registered in the VIS. By compelling MS to register (undeclared) authorities the necessary MS oversight on the national authorities having access to the VIS would be further strengthened, without creating undue administrative burden.
Establish reliable communication channels between the border crossing point and the visa issuing authorities.	Providing reliable communication channels between BCP and the visa issuing authorities to swiftly address cases where doubts exist on the visa data when crossing a border, thus eliminating the need for ad hoc cumbersome channels and reducing the administrative burden for the authorities concerned.
Enforce the obligation for a border guard to report simply and electronically a false match based on fingerprints (false negative authentication, false positive identification)	Digital solutions will make the reporting burden as light as possible, while keeping its effectiveness.
Extend access to full VIS file to asylum authority to use in asylum examination	Updating the legislative framework in order to provide the competent authorities with access to the data they need, which will lead to cuts in administrative costs.
Multi-modal searches with biometrics	By implementing fingerprint <i>and</i> facial image matching in a single system, rather than two separate systems, the overall infrastructure footprint (and hence investment) is considerably lower since computing resources for face and fingerprint recognition are shared. Multimodal identification
Improving the quality of facial images to enable biometric matching	

157 COM(2016) 272 final

	will increase overall system accuracy, thus presenting a net benefit for end-users.
Facial image recognition (searches) for law enforcement authorities.	By updating rules for access by law enforcement authorities to VIS data, with substantial safeguards, a contribution is made to efficient investigations in Member States.
Prior consultations carried out on persons holding more than one current nationalities	Updating the legislation to respond to practical needs of consular authorities.
Improvement of alphanumeric search for the different end users	Introducing flexible search profiles matching the requirements of the different user groups (consulates, border control, law enforcement agencies) will make it easier for them to use the system, resulting in saved time and more efficient use.
Integration in the VIS of the list of recognized travel documents	Cutting the administrative burden for the border control authorities by providing an easier-to-use and up-to-date way to check recognized travel documents. Cutting the administrative burden for the Commission services – currently in charge to keeping the lists up to date.
Interoperability with EURODAC to allow checks by consulates during the visa application process	Cutting the administrative burden for authorities performing checks on migration and security risks by stipulating interoperability rules with existing IT-systems.

## ANNEX 5: METHODOLOGY

### 1. Available data

A general caveat has to be stated regarding data collection. Both studies reported difficulties in finding reliable data because of scarcity of readily available data. Most notably, the number of TCN children that accessed the EU territory with a visa and who subsequently became victims of trafficking or other forms of abuse cannot be quantified precisely. Similarly, there are no figures currently available and no processed to collect that on third country nationals that accessed the EU territory legally and who subsequently became irregular. This is why extrapolations and assumptions were used when complete data was not at hand, as duly noted in the supporting studies and in this report.

The following assumptions were used calculating the costs of the policy options.

#### *Storing a copy of the travel document*

- Additional servers:
  - Option 1 – Number of entries within the 10 year period would approximately double; estimate based on the Smart Border study<sup>158</sup>;
  - Option 2 – Estimates based on interview feedback with relevant stakeholders<sup>159</sup>;
- Additional VIS storage – Assumed storage cost is EUR 1,200 / 1 TB;
  - Sub-option A requires additional 1100 TB storage;
  - Sub-option B requires additional 4160 TB storage;
- Scanning equipment – Estimated cost of one new scanning system is EUR 2,500;
  - Consulates – 1881 consulates;
  - EPSs – 2,683 VFS Global and TLS Contact application centres;
    - Sub-option B assumes that 20-30% of ESPs will require more than one additional scanner;
- Training and awareness raising – Based on interviewee feedback and findings from relevant studies<sup>160</sup>;
- System operational cost
  - Option 1 – The current operational cost of the VIS infrastructure is EUR 35 m. in FY2017<sup>161</sup>;
  - Option 2 – Estimates based on interview feedback with relevant stakeholders;
- Workload impact – Consulates handle approximately 10% of applications themselves (1.76m.) whereas the remaining 90% are outsourced to ESPs (15.8m.);
  - Consulates – the labour costs is EUR 26 / hour;

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158 [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/smart-borders/docs/smart\\_borders\\_costs\\_study\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/borders-and-visas/smart-borders/docs/smart_borders_costs_study_en.pdf)

159 Detailed calculation in Annex 3 to the Feasibility and implications of lowering the fingerprinting age for children and on storing a scanned copy of the visa applicants' travel document in the (VIS).

160 ETIAS Feasibility Study, 2016; Impact Assessment Report on the Introduction of the EES, 2016.

161 <http://www.eulisa.europa.eu/AboutUs/Finance/EULISA%20Budgets/eu-LISA%202017%20Initial%20Budget.pdf>

- Sub-option A requires additional 40 s / application;
- Sub-option B requires additional 190 s / application;
- ESPs – the labour cost is EUR 17 / hour;
  - Sub-option A requires additional 70 s / application;
  - Sub-option B requires additional 220 s / application.

Table 1: Summary of investment (one-off) and recurrent compliance costs (thousands EUR)

Costs (thousands EUR)	Option 1.A	Option 1.B	Option 2.A	Option 2.B
<b>One-off costs</b>				
Additional servers	5,000	5,000	244,000 – 414,000	244,000 – 414,000
Additional VIS storage	1,320	4,992	1,320	4,992
Scanning equipment: Consulates	4,703	4,703	4,703	4,703
Scanning equipment: ESPs	6,708	7,244 – 7,512	6,708	7,244 – 7,512
Training and awareness raising	161	161	161	161
<b>Recurrent operational costs</b>				
System operational cost (10 years ret.)	35,000	35,000	16,000 – 33,000	16,000 – 33,000
Workload impact: Consulates	3,875	5,750	3,875	5,750
Workload impact: ESPs	5,250	16,500	5,250	16,500

#### *Lowering the fingerprinting age for children*

- Child-friendly equipment – Assumed cost is EUR 3,000 / 1 new system;
  - Consulates – 1,651 consulates<sup>162</sup>;
  - ESPs – 2,683 VFS Global and TLS Contact application centres;
- Additional VIS storage – Assumed storage cost is EUR 1,200 / 1 TB;
  - Option 1 requires additional increase of storage by 4,4%, i.e. 7.7 TB;
  - Option 2 requires additional increase of storage by 8,8%, i.e. 15.4 TB;
- Training and awareness raising – Based on interviewee feedback and findings from relevant studies<sup>163</sup>;
- System operational costs – Assumed increase in operational costs is 4,4%, 8,8% respectively;
- Workload impact – The number of children applicants is estimated 0.7-1.05m. with the average of 875,000; consulates handle approximately 10% of applications themselves (1.76m.) whereas the remaining 90% are outsourced to ESPs (15.8m.);
  - Option 1 requires additional 0.2-1 min.;
  - Option 2 requires additional 0.4-2 min.

162 Number of consulates in non-Schengen countries in 2016.

163 ETIAS Feasibility Study, 2016; Impact Assessment Report on the Introduction of the EES, 2016.

Table 2: Summary of investment (one-off) and recurrent compliance costs (EUR)

Costs (EUR)	Option 1	Option 2
<b>One-off costs</b>		
Child-friendly equipment: Consulates	-	4,953,000
Child-friendly equipment: ESPs	-	8,049,000
Additional VIS storage	9,240	18,480
Training and awareness raising	138,175	138,175
<b>Recurrent operational costs</b>		
System operational cost	1,540,000	3,080,000
Workload impact: Consulates	7,583 – 37,941.50	30,332 – 151,766
Workload impact: ESPs	44,625 – 223,124.50	178,500 – 892,498

## 2. Assessment criteria

In line with the better regulation guidelines on impact assessments, the methodology underpinning the present report and its supporting studies focused on the significant social, economic, and fundamental rights impacts. Depending on each problem area scrutinised by the present study, the exact categories of persons and processes impacted by the foreseen measure could vary. This is why the impact of the measure will be examined separately under each problem area, to take account of its specificity.

The VIS concerns mainly two types of actors: visa applicants and Member States' authorities and hence these are the two categories most impacted by the envisaged measures. These impacts in turn can have broader consequences for the societies of EU Member States and the EU's external relations.

## 3. Categories impacted by the envisaged measures

The first group which is directly affected are applicants for a short stay visa, i.e. third-country nationals who are under the visa requirement and who apply for a short-stay visa at one of the Schengen consulates. As regards checks against migration and security databases, applicants will experience any change in the checks that they are subject of when applying only indirectly. As regards the travel document, the obligation currently exist for them to present it in a consulate and most MSs consulates already make copies of it, therefore this change will not be immediately experienced by the applicant. However, if this is to be used as evidence of nationality and identity in a return procedure, the impact on the person will be direct. As regards the possibility to lower the fingerprinting age for children, this will have a direct impact on children under 12 and their families. The family member(s) accompanying the child will have to be physically present in a consulate with the child at least for the first application, in order to submit fingerprints.

Under the proposed measure to include data on long stay visas and residence permits and their holders, a new category of data subjects will be added to the VIS. The impact on this category of TCN will not be direct, as the procedure to apply for these documents will not

be changed. However, they will be indirectly impacted by the fact that their data will be placed in a centralised database and checked against other databases in an automated manner.

The second group directly affected are Member States' authorities, mainly consulates in third countries as the visa-issuing authorities, as well as border, migration (including return), asylum (including Dublin) and in some cases law enforcement authorities. These authorities are directly impacted by all four measures. Additionally, the measure to extend the VIS to long stay visas and residence document may require access by authorities that currently are not involved in the VIS process (authorities issuing residence permits or cards, depending on national organisation). If the VIS is to be used for identifying children victims of trafficking or contribute to preventing this phenomenon, anti-trafficking authorities and child protection authorities may also be granted access.

There are further consequences on the society at large. Reinforced migration and security checks will impact the integrity of the visa processing and consequently the security of the Schengen area. Similarly, increased leverage for the EU readmission policy and better return rates will improve migration management, and thus the reliability and credibility of the EU migration policy. As many people travel to the EU to visit their family members, the protection of family life<sup>164</sup> will also be indirectly affected by increased or reduced possibilities for travel.

Ultimately, the cumulative effect of changes on the categories of TCN and the number of checks performed will have positive or negative impact on the EU's relations with third countries and the EU's image in the world. This is particularly relevant regarding the link between visa policy and readmission policy.

**4. Summary of possible impacts of the policy options**

The following table summarises the possible impacts of the policy options:

Table 4: Possible impacts of policy options

Economic impacts	<ul style="list-style-type: none"> <li>• Costs for public authorities (visa authorities/consulates):               <ul style="list-style-type: none"> <li>– direct (equipment, procurement to implement new etc.)</li> <li>– indirect (enforcement costs)</li> </ul> </li> <li>• benefits for public authorities (visa/border/migration/asylum/police authorities):               <ul style="list-style-type: none"> <li>– Reduced administrative burden</li> <li>– cost savings</li> </ul> </li> </ul>
Social impacts	<ul style="list-style-type: none"> <li>• integrity and security of Schengen area</li> <li>• external relations/image of EU</li> </ul>
Fundamental rights impacts	<ul style="list-style-type: none"> <li>• right to dignity (Article 1 CFR);</li> <li>• right to liberty and security (Article 6 of the Charter),</li> <li>• respect for private and family life (Article 7 of the Charter),</li> <li>• protection of personal data (Article 8 of the Charter),</li> <li>• right to asylum and protection of the principle of non-</li> </ul>

164 Articles 7, 9 and 33 of the Charter of Fundamental Rights of the European Union.

	refoulement (Articles 18 and 19 of the Charter) and protection in the event of removal, expulsion or extradition (Article 19 of the Charter), <ul style="list-style-type: none"><li>• the right to non-discrimination (Article 21 of the Charter)</li><li>• the rights of the child (Article 24 of the Charter)</li><li>• the right to an effective remedy (Article 47 of the Charter).</li></ul>
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The different possible interventions in the three problem areas are not likely to all have noteworthy impacts in all of the above-mentioned areas. Therefore the assessment for each problem area is focused on the fields where the different policy options are likely to have significant impacts. A selection of the most relevant impacts will be established for each problem area. However, given its significant impact on persons subject to VIS procedure and the horizontal nature of its principles, the following sub-section will focus in particular on the data protection aspects, which will thereafter be specifically analysed under each policy option.

## ANNEX 6: MONITORING AND EVALUATION

Specific objectives	Key Performance Indicators	Method of data collection/source
<b>Copy of the travel document</b>		
<ul style="list-style-type: none"> <li>- Contribute to assisting in the identification and return of third country nationals that do not, or no longer fulfil the conditions for entry to, or stay on the territory of the Member States in accordance with the Return Directive.</li> <li>- Improve efficiency of the VIS for the purposes of facilitating return procedures.</li> </ul>	- Number of cases of identity / nationality proven regarding TCN visa overstayers who lack or fail to produce a copy of their travel document upon apprehension	- Survey among Member States
	- Return rate of third country nationals in a return / readmission procedure	- Eurostat statistics, SIS statistics on return (eu-LISA)
	- Lower administrative burden for Member States in return procedures	- Survey among Member States
	- Cost savings for Member States public authorities; e.g for housing, food, administration and related expenses related to return procedures policy	- Survey among Member States
<b>Lowering the fingerprinting age</b>		
<ul style="list-style-type: none"> <li>- Better meeting the VIS objectives (facilitation of the fight against fraud, facilitation of checks at external border crossing points, facilitate the application of the Dublin II Regulation).</li> <li>- Support with the prevention and fight against child trafficking, and with the identification/verification of identity of TCN children.</li> </ul>	- Number of cases of child trafficking TCN <17 discovered through VIS	- Annual report from Member States and Europol to the Commission
	- Number of cases of a VIS file being used in asylum procedures for TCN <17 (Dublin II)	- Survey among Member States
	- Rating by relevant authorities whether the change is helpful for combatting child trafficking	- Survey among Member States
	- Any additional costs incurred by consulates and ESP	- Survey among Member States and ESP
<b>Repository of long-stay visas and residence documents</b>		
<ul style="list-style-type: none"> <li>- Facilitate and strengthen checks at external border crossing points within the territory of the Member States.</li> </ul>	- Number of checks performed at external border-crossing points	- eu-LISA statistics
	- Percentage of long stay visa and residence document sent for second line checks	- eu-LISA statistics
	- Border guards' satisfaction	- Survey among Member States
	- Number of frauds detected at the border for LSV and residence documents	- eu-LISA statistics
<ul style="list-style-type: none"> <li>- Enhance the internal security of the Schengen Area by facilitating the exchange of information among MS on TCNs holders, or applying for long stay and</li> </ul>	- Migration officers' rating whether the system is helpful in the assessment	- Survey among Member States
	- Number of cases in which fraud was detected and reported during the issuance process	- eu-LISA statistics

residence documents.	- Number of cases where previous history of documents or applications was checked	- Survey among Member States
- Contribute to the prevention detection and investigation of terrorist offences or of the serious criminal offences.	- Number of investigations that accessed data	- Annual report from Member States and Europol to the Commission
	- Number of successful hits	- eu-LISA statistics, annual report from Member States and Europol to the Commission
- Gather statistics to support evidence-based European Union migration policy making.	- Quality and usefulness of the statistics extracted	- Survey among Member States
<b>Security checks for when processing applications of visa required third country nationals</b>		
Implementing the same procedural search standard as other constitutive system-elements of the visa policy, thus lowering the burden for Member States and contributing to the objective of a common visa policy.	- System statistics (number of cross-checks, number of hits)	- eu-LISA statistics
	- Rating by relevant authorities regarding usefulness of the change	- Survey among Member States

## **ANNEX 7: EXECUTIVE SUMMARY OF THE STUDY ON STORING A SCANNED COPY OF THE VISA APPLICANTS' TRAVEL DOCUMENT IN THE VISA INFORMATION SYSTEM (VIS)**

Article 2(e) of the VIS Regulation (EC) No 767/2008 foresees that one of the objectives of VIS is ‘to 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.’ Article 31(2) enables the Member States – via the designated competent authorities for carrying out checks at external border or within the territory of the Member States are allowed to access certain VIS data for verification and identification purposes (specified in Article 19 and 20) – to transfer or to make available a limited set of these data to a third country for the purpose of proving the identity of third-country nationals for the purpose of return.<sup>165</sup> Thus, although not explicitly defined in Article 2, when taken together, these provisions foresee that the VIS can be used to facilitate both the identification of the irregular migrant and the issuing of travel documents for return.<sup>166</sup>

In its report on the implementation of VIS of October 2016, the European Commission found that the use of VIS in return procedures has so far been limited, whereas recent trends underline an increased need to use this instrument which provides a proof of identity necessary in a return procedure.<sup>167</sup>

### **1. Analysis of the problems**

Under topic 1, two main problems are identified as contributing to a situation in which Member States face high barriers to complete return procedures regarding third country nationals who overstay their visa and fail to produce a valid travel document on request. These two problems are:

**Problem 1:** In the absence of a valid travel document (or copy thereof), return proceedings for TCNs who entered the EU using a visa are slow and often unsuccessful;

**Problem 2:** Delays in the return process result in increased costs and administrative burdens realised by the Member States.

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165 The Regulation allows the designated competent authorities to transfer the following data from the visa application file: first name, surname and former surname (if applicable); sex, data, place and country of birth; current nationality and nationality at birth; type and number of the travel document, the authority which issued it and the date of issue and of expiry; residence; and in the case of minors, the surname and first name(s) of the applicant's father and mother.

166 EMN Ad-Hoc Query on COM AHQ on Member States' Experiences with the use of the Visa Information System (VIS) for Return Purposes. Requested by COM on 18th March 2016. 24 responses were provided: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/ad-hoc-queries/ad-hoc-queries-2016.1042\\_com\\_ahq\\_on\\_member\\_states\\_experiences\\_with\\_the\\_use\\_of\\_the\\_visa.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/ad-hoc-queries-2016.1042_com_ahq_on_member_states_experiences_with_the_use_of_the_visa.pdf).

167 COM(2016) 655 final, “Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT Evaluation,” Brussels: 14 October 2016: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/work-in-progress/initiatives/docs/gmige/report\\_from\\_commission\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/work-in-progress/initiatives/docs/gmige/report_from_commission_en.pdf).

Although visa applicants, and subsequent visa holders, are under strong obligation to establish their identity by presenting a valid travel document during both the application process and upon entry to the EU, Member States report that many TCNs visa overstayers who become subject to a (forced) return are no longer in possession of their travel document, or fail to produce it upon request. In such cases, the sending Member State must file an application for a replacement travel document, or *laissez-passer*, either with the in-country diplomatic representation of the country of origin, or directly with the competent authorities of the country of origin, pending the positive identification of the foreign national in question. Most third country diplomatic representatives only issue an emergency travel document once the identity and nationality of the TCN can be verifiably proven by the sending Member State. Notably, the authorities of the majority of third countries currently do not accept the information that can be extracted from the VIS as sufficient evidence to verify the person as one of ‘their’ nationals, and they request a scanned copy of the TCN’s travel document as proof. In this context, Member States can prove nationality by providing a scanned copy of the TCN’s travel document that provided the basis for issuing the Schengen visa.

Indeed, in the absence of a valid travel document, the scanned copy of a former visa holders’ travel document is key to being able to prove the nationality of a TCN. This is particularly necessary for facilitating returns to traditionally non-cooperative countries of origin in respect of readmission of their nationals. In the current situation, the process by which Member States obtain the travel document copy is hampered by the absence of a legal framework allowing Member States to exchange or transfer such information, as well as the slow or non-existent cooperation on the part of third country authorities. While the effectiveness of the measure ultimately depends on the willingness of third countries to cooperate with the Member States, the evidence suggests that the measure would make it more difficult for third countries to deny return, as both the information in VIS, as well as copies of the travel documents would be available.

The study estimates that the total number of visa holders becoming irregular migrants by overstaying their visa is approximately 294 000 persons per annum. According to stakeholders interviewed for this study, around 90% of visa overstayers (i.e. 264 453) will become subject to return proceedings, and we estimate that 10% to 20% of these cases involve TCNs without travel documents at the time of apprehension; and that more than half will not be executed due to Member States’ inability to obtain evidence to prove the TCN’s nationality.

On this basis, the number of return decisions concerning TCNs who entered the territory on a visa, and that could not be implemented due to missing travel documents, is estimated between 15 867 to 39 668 cases **Error! Reference source not found.** in chapter **Error! Reference source not found.** This represents roughly 13% to 33% of effective returns of visa-required third country nationals.<sup>168</sup> While the actual number of estimated cases is low, based on our calculations, the impact of undetected cases is potentially high. Indeed, one Member State estimates that the number of detected overstayers represents just 40% of all visa overstayers (i.e. the undetected population). Moreover, according to migration officers

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168 Based on the three-year average (2014 – 2016) of effective returns of nationals from visa-required third countries.

that have run simultaneous searches of VIS against EURODAC for asylum searches, about 30-35% of asylum seekers can be identified using the VIS.<sup>169</sup>

## 2. Objectives

The **general objectives** of the proposed adaptations to the VIS system are the following:

Contribute to assisting in the identification and return of third country nationals that do not, or no longer fulfil the conditions for entry to, or stay on the territory of the Member States in accordance with the Return Directive.

Improve efficiency of the VIS for the purposes of facilitating return procedures.

The **specific objectives** of the proposed measure may be formulated as follows:

- Facilitate that Member States' authorities are able to confirm the identity and prove the nationality of TCN visa overstayers who lack or fail to produce a copy of their travel document upon apprehension
- Improve the return rate of third country nationals found in a return / readmission procedure

## 3. Policy options

The following policy options were investigated:

Option 0. Baseline (no change)

Option 1. Include a scanned copy of the travel document in the central VIS (centralised)

Option 2. Include a digital copy of the travel document in national visa systems (decentralised)

In addition to the main options, two additional sub-options were defined regarding the scope of the data to be recorded in VIS:

Sub-option A. Storage of biographical page only

Sub-option B. Storage of all used pages of the applicant's travel document

The two sub-options can be applied to both Option 1 and Option 2 described above.

## 4. Assessment of impacts

### *Economic Costs*

Table 1 and Table 2 present an overview of all relevant costs (both one-off and recurrent, as well as recurrent compliance costs) from the options and their sub-options. The cost estimations are based on various sources (experience of related initiatives, stakeholder consultation) and derive from a number of assumptions, which have been detailed in Chapter 3.5.1 and in Annex III.

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<sup>169</sup> Commission Staff Working Document, XXX (2017), Impact Assessment accompanying the document for a proposal for a Regulation of the European Parliament and the Council establishing interoperability between European Union information systems for security, border and migration management.

**Table 1 Summary of investment (one-off) and recurrent compliance costs (millions)**

Investment and operational costs	Option 1	Option 2	Sub-option A	Sub-option B
One-off costs (m)				
Additional servers. VIS databases	€ 5	€ 244 – € 414	-	-
Additional VIS storage	-	-	€ 1,3	€ 5
Scanning equipment: Consulates	-	-	€ 4,7	€ 4,7
Scanning equipment: ESPs	-	-	€ 6,7	€ 7,2 – 7,5
Training and awareness raising	€ 0,2	€ 0,2	-	-
Total one-off costs	€ 5,2	€244,2- 414,2	€ 12,7	€ 16,9 – 17,2
Recurrent operational costs (m)				
Operational cost 10 year retention	€ 35	€ 16 – € 33	-	-
Total recurrent costs	€ 35	€ 16 – 33	-	-
Workload impacts: Costs to scan, prepare and transfer the TD copies(m)				
Consulates	-	-	€ 3,9	€ 5,8
ESPs	-	-	€ 5,3	€ 16,5
Total additional workload costs	-	-	€ 9,1	€ 22,3
Total investment and recurrent compliance costs (m)	€ 40,2	€ 260,2 – 447,2	€ 21,9	€ 39,1 – 39,5

Source: Ecorys calculations based on data provided during stakeholder interviews.

Note: Calculations may not add up due to rounding.

**Table 2 Summary of additional workload-related costs**

Costs to TCNs	Option 1	Option 2	Sub-option A	Sub-option B
Costs to TCNs				
Visa fees (per TCN)	-	-	-	€ 1 – € 5
Opportunity costs (per TCN)	-	-	€ 0,60	€ 1,89
Total costs to TCNs	-	-	€ 0,60	€ 2,89 – 5,89

Source: Ecorys calculations based on data provided during stakeholder interviews.

Note: Calculations may not add up due to rounding.

Both options and the two sub-options require some one-off costs, both to implement the proposed change and to train the relevant personnel and raise awareness along the chain of stakeholders.

One-off investment costs are significantly higher for Option 2 than for Option 1, as the former would involve the expansion or setting up of national systems. The study notes, however, that since the history of previous applications can be easily checked in the VIS, no new copies are requested from the applicant if documents have already been submitted during a previous application, and if that document has not yet expired and been replaced with a new one. This suggests that required investments in storage capacity under Option 2 may be substantially lower than the calculations suggest. The study was unable to collect

data enabling an accurate estimation of the investments required at national level due to the late inclusion of this option in the analysis. Regarding the sub-options, the technical infrastructure to be added at ESPs and consulates is limited to a document scanner connected to a computer.

On-going compliance costs are summarised as follows:

Costs incurred by visa authorities and ESPs stem from the additional time spent to (a) make the scanned copy of the travel document, (b) transfer the data to the consulate and (c) to transfer the data (digitised copies) from the consulate to the NS-VIS. The costs are driven by the choice of sub-option; the main options do not affect the workload of the consulates and ESPs. Thus, the costs for consulates and ESPs are substantially higher under sub-option B compared to both sub-option A and the current situation (baseline scenario).

Costs incurred by third country nationals are similarly driven by the two sub-options. In the event that sub-option B is implemented, ESPs and consulates may pass additional workload costs onto the TCNs in the form of increased visa service fees charged to applicants. Given that the average service fee charged to applicants today is approximately € 25,00, the average fee increase will range from € 1,00 to € 5,00 per applicant under sub-option B. By contrast, sub-option A would result in only a marginal increase in the workload of ESPs relative to the current situation, therefore the ESPs are unlikely to increase the service fee levied on visa applicants. Visa applicants may additionally experience increased wait time at the application centres due to the increase in time spent by ESP personnel for receiving each application. The identified opportunity costs are, however, minor compared to the current situation.

#### *Economic benefits*

As shown in Table , the measures will produce several important economic benefits for Consulates (and ESPs, as a result of the additional visa fees) as well as Member States' migration and return authorities. Implementation of a measure to systematically include scanned copies of visa applicants' travel document in the VIS, which would be either directly or indirectly searchable and accessible to the relevant authorities, will:

- Greatly reduce the burden to confirm this category of TCNs' identity and facilitate the return process while facilitating the likely cooperation on the part of third country authorities to issue an emergency travel document to return their nationals;
- Reduce delays associated with ad hoc communications and exchange between Member States' authorities and the consulates; and
- Eliminate inefficient procedures involved with retrieving, scanning, zipping and coding hard copies.

The identified economic benefits are primarily drive by the choice of main option (Option 1 and Option 2). While Option 1 performs marginally better on these objectives compared to Option 2, both measures will significantly reduce inefficiencies associated with the current procedures.

**Table 3 Summary of benefits of the policy options**

	Option 1	Option 2
Consulates		
Cost savings from time spent on responding to supporting document requests	€ 0,7 – € 2,8 m (€ 366 – € 1.462 per consulate)	€ 0,7 – € 2,8 m (€ 366 – € 1.462 per consulate)
Migration and return authorities		
Cost savings from time spent on retrieving TD copy	€ 3,2 – 12,7 m	€ 3,0 – 12,3 m
Cost savings from reduced delays in return procedures	Daily costs of delays reduced by up to 14 days € 46,3 m – 92,6 m	Daily cost of delays reduced by up to 13,5 days; costs incurred for delays of ½ day € 44,6 – 89,3 m
Cost savings from executing a higher proportion of return decisions, in less time	€ 6,7 – 21,4 m (if 50% improvement) € 10,0 – 32,1 m (if 75 % improvement)	€ 6,6 – 21,3 m (if 50% improvement) € 9,9 – 31,9 m (if 75% improvement)
Total benefits (50 % improvement)	€ 57,5 m – 132,2 m	€ 55,6 – 128,3 m
Total benefits (75 % improvement)	€ 60,8 – 142,9 m	€ 58,9 – 139,0 m

The saved costs for consulates from the reduced number of supporting document assistance requests is estimated to range between € 0,7 million to € 2,8 million across all Schengen consulates worldwide. The impact is the same across both main options.

The saved costs for migration and return authorities from the reduced workload associated with contacting the consulates and obtaining the scanned copy of the via applicants' travel document is valued higher under Option 1 than under Option 2. This is due to the fact that under Option 2, Member States will still need to request the information from the national authorities responsible for storing the scanned copy, a procedure that would require an estimated 15 minutes or less to carry out. Option 1 is therefore marginally more efficient than Option 2.

The cost savings from executing a higher proportion of returns (in less time) will also increase under both of the main options. The benefits are only marginally lower under Option 2, due to the remaining workload associated with making requests to the storing authority, as shown in Table 3 (lower benefit from slightly less efficient procedures). The full impact is difficult to estimate with any accuracy as it is wholly dependent on the cooperativeness of the third country authorities.

In terms of the impact on duration and timeliness of return proceedings, both options would significantly reduce the wait time imposed on migration and return authorities during the process of confirming the identity of TCNs. Under Option 1, the delays will be effectively eliminated, resulting in a delay reduction of up to 14 days. Option 2 would have a slightly lower impact as Member States' authorities may still be required to wait for several hours before receiving a reply from the responsible national authority for storing the travel document. The potential benefits to be realised from both options will be sufficiently substantial to offset the costs incurred to implement and comply with the respective options.

### *Policy impacts*

The storage of visa applicants’ travel documents in VIS will improve the implementation of the objective of facilitating returns of TCNs who have been issued with a return decision. Both Option 1 and Option 2 will enable Member States to obtain the necessary evidence for proving the nationality of TCN visa overstayers who have been issued with return decision, but who lack a valid travel document, to equal effect. This is because both options entail the systematic collection and storage of the visa applicants’ travel document that provided the basis for issuing the Schengen visa in VIS. In both cases, however, the effective change is highly dependent on the third country in question.

The experience of Member States to date indicates that there is a direct correlation between the rate of effective returns based on VIS matches combined with a copy of the travel document on the one hand, and the level of historical cooperation with the given country of origin on the other. In other words, if a return is theoretically feasible (due to positive confirmation of identity), and the country in question is typically cooperative in dealing with returns, then the information in the VIS matches coupled with a copy of the TCN’s travel document will be extremely useful and sufficient for facilitating the return. However, if the country in questions is non-cooperative on returns in general, Member States have few recourses to compel the return.

Based on inputs provided during the stakeholder consultation, the study cautiously assumes that the proportion of effectively executed returns of TCN visa overstayers without travel documents will increase by 50% to 75% as a result of the proposed options.

If the proportion of effectively executed returns increases by 50%, then the benefit is an additional 7.934 to 19.834 TCNs returned compared to the current situation.

If the proportion increases by 75%, then benefit is an additional 11.900 to 29.751 persons returned.

**Table 4 Estimated benefits for the implementation of returns**

Impact on the implementation of returns: Additional returns of TCNs without travel documents						
Estimated number of returns not implemented		% improvement	Number of additional returns: Scenario A (50% improvement)		Number of additional returns: Scenario B (75% improvement)	
Lower	Upper		Lower	Upper	Lower	Upper
15.867	39.668	50% – 75%	+ 7.934 TCNs returned	+ 19.834 TCNs returned	+ 11.900 TCNs returned	+ 29.751 TCNs returned

### *Fundamental rights impacts*

In accordance with the Charter of Fundamental Rights of the EU, to which EU Member States and institutions are bound when they implement EU law (Article 51(1) CFR), the identified benefits of the proposed measure must be balanced with the obligation to ensure that any corresponding interferences with fundamental rights are limited to what is strictly necessary to genuinely meet the objectives of general interest pursued, subject to the principle of proportionality (Article 52(1) CFR). The study does not look at all fundamental rights issues arising from the proposed changes to the VIS Regulation. This analysis

focuses on the possible (negative and positive) impacts of the proposed measure for the following fundamental rights of the CFR:

*Right to asylum and protection of the principle of non-refoulement (Article 18 and 19)*

*Rights to non-discrimination (Article 21)*

*Right to effective remedies (Article 47)*

*Rights to the protection of privacy and personal data (Article 7 and 8).*

The proposed measure brings both risks and opportunities with respect to fundamental rights. The storage of a scanned copy of the visa applicants' travel document in the central VIS (Option 1) or national VIS (Option 2) can have a positive impact for the right to asylum (Article 18 CFR) and the protection of the principle of non-refoulement (Article 19 CFR) by providing designated authorities access to additional evidence to prove an asylum seekers' identity. The sub-options could in fact be useful to asylum authorities for verifying the identity of a person in need of international protection (sub-option A) or for proving the escape route that the person used (sub-option B), which is important in an assessment of merits for asylum cases. The existing safeguard which bans the transfer of personal data to third countries if that person has requested international protection continues to apply (Article 31(3)), mitigating the risk of serious harm for asylum applicants or their families.

The proposed measure would create an interference with the right to privacy and family life (Article 7 CFR) and the right to the protection of personal data (Article 8 CFR), as it involves the processing of personal data. The limitation is modest under sub-option A, as the only additional category of personal data that could potentially be stored relative to the current situation is the personal identification number of the document holder. In fact, the measure implies the processing of nearly the same amount and type of personal data as is processed in the current situation, merely stored in a different format (i.e. the scanned copy of the travel document, as opposed to an entry in the VIS file based on information submitted as part of an application form). Safeguards prohibiting the further processing of these data by migration and return authorities as well as to prevent unauthorised access and unlawful sharing with third parties should limit any potential negative impacts implied by the sub-option. By contrast, sub-option B involves the processing of a large amount of new personal data, which would affect the entire population of TCNs under visa obligation. The data is not currently stored into VIS, therefore new safeguards would need to establish the purpose of the data processing. Such safeguards should explicitly prohibit the sharing of these data with third parties given that it is not foreseen to positively contribute to the objective of facilitating return.

Regarding the data protection impact of the main options, whereas Option 1 involves the central storage of the scanned travel document copy, Option 2 involves implies storage at national level. This means that the Member State which entered the data would own the data, and thus be responsible for sharing its data with the requesting Member State following a positive "hit". Option 2 may include less risks with regard to purpose limitation and accessibility of personal information serving as an additional safeguard against unauthorised access.

The measure has no impact on the right to an effective remedy as currently provided in Article 40 of the VIS Regulation. The measure would also not affect the right to non-discrimination, as it does not discriminate on any of the grounds established in Article 21 CFR.

### *Necessity and proportionality*

The proportionality test requires demonstrating that the measure would be suitable with respect to achieving its purpose. The answer for Option 1, Option 2 and Sub-option A is affirmative, as the travel document data page is precisely what is required by third country authorities as proof of nationality in the absence of a valid travel document. A separate question is whether the measure can be made more targeted to reduce its interference on the right to privacy and data protection. In addition to what is explained in the description of fundamental rights impacts (chapter 3.4.3), the measures analysed are targeted to TCN travellers to the EU who are under visa obligation.

Regarding the choice of main option, while both options will achieve the same level of effectiveness, Option 1 achieves a higher level of efficiency (timeliness and cost-efficiency). Furthermore, Option 2 (decentralised storage) would not be considered as less intrusive given that the same information would be made available to the designated authorities in all MS. No matter which technical architecture is selected, the measure is intended to enable a Member State's authority to access data stored by (an)other Member State during the visa procedure.

To answer the question as to the proportionality of the sub-options, it is relevant to distinguish between the personal data stored in the data page of one's travel document and the information that can be derived from the visa stamps and stickers affixed to the documents' visa pages. The scope of personal data to be stored under sub-option A is both relevant and necessary for the stated purposes of facilitating returns. The intrusiveness of the proposed sub-option is in itself very modest, as the same data are already entered in VIS in the current situation, though accessible in a different format. The only category of data not currently collected and stored in VIS from visa applicants, which in some cases may be present in the data page of a visa applicants' travel document, is the of national personal identification number. Assuring that appropriate safeguards prevent against the processing of these new data, the interference on the right to privacy and the protection of personal data would not be greater than the current VIS system, for which no complaint on data protection has been registered to date (COM(2016) 655 final, page 12), and adequate safeguards have been put in place. By contrast, the data implied by sub-option B is substantially more intrusive and it will not contribute to the explicit objective of the measure, which is to facilitate the return of TCNs without a valid travel document. The study concludes that sub-option B is more intrusive and no more effective for achieving the identified objectives. As a result, the processing of these data is considered disproportionate.

The analysis undertaken in the preceding sections suggest that it is possible to justify the necessity and proportionality of a measure involving storage – either at central level (Option 1) or decentral level (Option 2) – of a scanned copy of the data page of the visa applicants' travel document in the VIS system.

## 5. Comparison of options

The preferred option to emerge from this study is Option 1, sub-option A: centralised storage of a scanned copy of the bio-data page of the visa applicants' travel document in the VIS.

Both Option 1 and Option 2, in combination with sub-option A, will achieve the roughly the same level of effectiveness in terms of their contribution to the objective of facilitating the return of TCNs visa overstayers who lack valid travel documents. Option 1 achieves a marginally higher level of efficiency (timeliness and cost-effectiveness) than Option 2, particularly in terms of: reducing the burden to Member States to confirm this category of TCNs' identity and facilitating the cooperation of Member States to issue ETDs for their return; reducing delays associated with ad hoc communications between Member States and their consulates; and by eliminating inefficient procedures involved with retrieving, scanning, zipping and coding hard copies of travel documents.

While Option 1 performs only marginally better on these objectives compared to Option 2, both measures will significantly reduce inefficiencies associated with the current procedures. Moreover, the costs under Option 1 and the sub-options are, however, expected to be broadly compensated in the first year of implementation, whereas Option 2 will be compensated within 3 to 5 years by the expected cost savings and delay cost reductions at the level of Member States (also to be realised under Option 1). By contrast, while sub-option B is slightly more costly than sub-option A, it does not provide any added value for achieving the policy objective relative to sub-option A. Therefore sub-option B can be discarded.

From a fundamental rights perspective, in addition to the fundamental rights impacts described above, the main potential benefit of Option 2 vis-à-vis Option 1 is that the travel document copy would be stored nationally and therefore access by the designated migration or return authority in one Member State would be subject to the authorisation granted by the Member State that entered the data into VIS. However, similar results could be obtained under Option 1, by using a restricted authorizations regime. Moreover, in terms of privacy impacts and the degree of intrusiveness, Option 2 (decentralised storage) would not be considered as less intrusive given that the same information would be made available to the designated authorities in all MS.

By ensuring that accessibility to the copies of travel documents in VIS is limited for the purposes as currently provided in 15, 16, 18, 19 and 20 VIS Regulation, amending Article 31 (2) to limit transfer of travel document copies to third countries for the purpose of facilitation return procedures, Articles 18, 19 and 20 VIS Regulation, and establishing adequate safeguards to ensure rights to privacy and data protection are respected, Options 1 and 2, and sub-Option A pass the test of proportionality.

## **ANNEX 8: EXECUTIVE SUMMARY OF THE STUDY ON FEASIBILITY AND IMPLICATIONS OF LOWERING THE FINGERPRINTING AGE FOR CHILDREN**

### **1. Analysis of the problems**

Current EU legislation on the visa application procedure for short-stay visas exempts children under the age of 12 from the provision of fingerprints. Without fingerprints it is more difficult to unambiguously verify the identity of a TCN child (<12) at the border or within the Schengen territory. In relation to this root cause 2 problems have been formulated that the introduced adaptation might be able to address.

**Problem 2.1:** sub-optimal achievement of various objectives of the VIS set out in Article 2 of Regulation (EC) No 767/2008, in particular as regards to the prevention of visa fraud, to facilitate checks at external border crossing points and within the territory of the Member States, and to facilitate the application of the Dublin II Regulation.

**Problem 2.1:** sub-optimal provision of appropriate protection to TCN (<12) children, either from trafficking with the help of a visa, or in the case they are found in Schengen territory in a situation where their rights may be or have been violated (trafficking, missing children, unaccompanied minors applying for asylum).

### **2. Objectives**

In relation to the defined problems, two objectives of the proposed second adaptation can be defined.

- Better meeting the various VIS objectives (facilitation of the fight against fraud, facilitation of checks at external border crossing points, facilitate the application of the Dublin II Regulation,)
- Support with the prevention and fight against child trafficking, and with the identification/verification of identity of TCN children who are found in Schengen territory in a situation where their rights may be or have been violated (trafficking, missing children, unaccompanied minors applying for asylum).

### **3. Policy options**

The following policy options were investigated.

#### *Option 0. Baseline (no change)*

The VIS Regulation (Article 9(6)) requires Member States to enter the fingerprints of applicants in the VIS. The inclusion of 10 fingerprints and a facial image is arranged through Article 13(2) of the Visa Code. Biometric matching of fingerprints constitutes the main method for identification and verification. Children under the age of 12 are currently exempt from the obligation to provide fingerprints. In the case the measure to take fingerprints of children under the age of 12 would not be introduced relevant authorities continue to have challenges to identify and verify the identity of young children and to offer appropriate protection.

### *Option 1. Lowering the fingerprinting age to 6 years*

Under this scenario, fingerprints will be taken from every visa applicant from 6 years of age and above, thereby effectively increasing the group of applicants by adding the cohort of 6 to 11 year-olds.

In 2013 the European Commission's Joint Research Centre (JRC) carried out a study on the question whether or not automated fingerprint recognition for children is possible with recognition rates similar to those reached for adults. The study concluded that under appropriate conditions, fingerprint recognition of children aged between 6 and 12 years is achievable with a satisfactory level of accuracy. One such condition would be, for example, to ensure an appropriate level of training of operators to acquire high quality images.

Option 1 is also in line with the proposal for a revised EURODAC Regulation, which would lower the fingerprinting age from 14 to 6. The JRC study and recent developments related to the protection of children in irregular migration were at the basis of this proposal.

### *Option 2. Lowering the fingerprint age including all ages*

Under this scenario, fingerprints will be taken from visa applicants of all ages thereby effectively increasing the group of applicants by adding the cohort of 0 to 11 year-olds.

In the JRC study evidence is presented from other studies that it is feasible to take reliable fingerprints of children even younger than 6, although this may result in stronger technical and procedural changes (see paragraph 4.4.2 for detailed explanation). These indications, combined with the fact that all children have the same rights, including rights to protection, result in the inclusion of option 2.

## **4. Assessment of impacts**

### *Economic costs and benefits*

Three main categories of economic costs and benefits were included in the analysis:

- (i) the investment or set-up costs (one-off costs) induced by modifications in procedures and legal changes and;
- (ii) the impacts in terms of workload and administrative burden (operational costs), which may have a net positive or negative economic impact for the involved stakeholders;
- (iii) opportunity costs for TCN children and parents resulting from additional waiting time at the visa application centres and costs incurred by authorities in the Schengen area.

The one-off costs are higher for option 2 than for option 1. This is first of all because taking fingerprints of children younger than 6 is likely to require a new, different type of scanner and software. Further investigation into the technical feasibility is recommended. Secondly, as the size of biometric samples to be included in in the case of the second option is larger, more is requested in terms of storage of the system and the capacity of the BMS. The expected training costs are estimated to be the same for some options.

With regards to operational costs, again the costs are expected to be higher for option 2 than for option 1. Not only are prints to be taken from double the number of children, but also the time that it takes to capture a print is expected to be longer.

As for the third category of costs/ savings, the fingerprinting time of the youngest age group is expected to be higher, resulting in more additional waiting (/higher opportunity costs) time for a child under 6 and its family than for children aged 6-12. For member state authorities no impacts are expected for Member States' visa authorities. It is expected that the adaptation to the age limit might save Member States' authorities dealing with trafficked/ missing children considerable time identifying children. The specific impacts are unknown but it seems logic to assume that total benefits are higher in the case of option two as this option affects more children.

### *Policy impacts*

Taking fingerprints of young children could support border authorities in detecting identity fraud as it would help them to ascertain whether the child at the border is the child that has been granted a visa. In addition, it facilitates also the identification of traffickers and trafficking networks.

The prevention of identify fraud is raised by several consulates as the main potential benefit of the proposed adaptation. However, no information is available to state the actual size of the problem.

A necessary precondition to achieve the full potential effectiveness of entering fingerprints of TCN children (<12) for the prevention of trafficking of TCN children (<12), is having fingerprints of each incoming TCN checked and verified at Schengen entry ports. At the moment such checks are not consistently executed.

The adaptation could also contribute to the Identification and verification of the identity of TCN children <12 on Schengen territory, hereby allowing for:

- Family unification within and outside the Schengen area
- Verifying the familiar relationship
- Dublin and asylum examination

### *Fundamental rights impacts*

Both options under investigation could have positive fundamental right impacts. The adaptations could assist in the prevention of children being trafficked and in identifying children who have gone missing, or who are abducted or became victims of human traffickers, thereby enabling these children to reunite with their family members (but only if it is in their best interest). Also, it could support the execution of the Dublin Regulation.

The proposal of lowering the age of fingerprinting children, whether it being option 1 or 2, will also have an impact on the rights to human dignity and privacy and personal data protection. Fingerprints must be taken in full respect of human dignity and in a manner that is appropriate to the child's age and maturity. It is advised to include a provision to the Visa code explicitly requiring that fingerprints be taken in a child-friendly and child-

sensitive manner by consulate officials or ESP personnel who have been specifically trained to collect biometric data from children.

With regards to privacy and personal data protection, as children are a particularly vulnerable group, the pursued objectives of data processing must be clearly identified to assess whether these measures are appropriate, proportionate and fully address the problem at stake. The processing of fingerprint data for children will be subject to the same safeguards and purpose limitations as exist for the processing of biometric data of TCN visa applicants above the age of 12. The existing safeguards ensure the strict purpose limits of the data processing. The safeguards continue to prevent unauthorised access and unlawful sharing of this information to third parties.

As described in the problem analysis there are cases of children entering or attempting to enter the EU on a visa who are victims of child trafficking, or have gone missing. Such cases could be detected by a more complete visa policy. This objective requires that the relevant or designated authorities would need access to search and process the data stored in VIS. Child protection authorities currently do not have access to the VIS. If they should be granted access this should be specified in the VIS Regulation. A difference must be made between the use of children data in the interest of children, (such as with the objective of protecting children, for example against human trafficking or re-unification with parents), and its use for objectives that could possibly be in their detriment.

#### *Necessity and proportionality*

Lowering the fingerprinting age of children in VIS may have a positive impact for the protection of the fundamental rights of children, protecting them against child trafficking or protecting the right to family life by reuniting missing children with their family members. Considering this objective of tracing or identifying missing children in Europe, the proposed measure, may complement the existing tool in SIS II for the reporting of alerts on missing persons.

The necessity and proportionality of the proposed measure of lowering the fingerprinting age to children of 6 year old (**option 1**), or to include all ages (**option 2**) depends on the size of the problem, with other words on the number of TCN children under 12 who after their visa application are found to be involved in visa fraud, and the number of TCN children (<12) who have gone missing in the Schengen area.

Between 1.4 and 2.1 million children under 12 are traveling into the Schengen area with a uniform visa each year, half of them are presumably younger than 6 years old. There are no numbers available on identity theft after a visa has been granted (as currently there is no possibility to verify identity at border crossings). With regards to victims of trafficking, taking the latest Eurostat data into account each year they are expected to be around 375-500 TCN victims under 12 year old to be found each year. Studies and expert opinions suggest, the lower the age the lower the share of victims. In 2015 it was estimated by Europol that, at least 10 000 unaccompanied minors went missing (age unspecified). But it is not known if they have a VIS record. Interviewed stakeholders believe this number to be marginal. One remark: with regards to both trafficking and missing children numbers it may be expected that the number of factual cases is a higher than the number of known cases.

**Option 1.** Although the number of potentially affected children appears to be low, taking into account the positive impact for protecting the right to family life and best interests of the child, this option can be considered a proportional measure under specified purposes, strict conditions and safeguards, ensuring that the fingerprints are only accessed and used to protect children from trafficking or identify and protect missing children. Considering the data protection impact and the right to information included in Article 37 VIS Regulation, taking into account that children (generally) have no impact on the decision of their parents, strict time limits must be applied to ensure that their data are no longer stored than for what is strictly necessary. Sufficient safeguards must be provided to ensure that the fingerprint are taken in a child friendly manner, not only at the time of collection during the visa application, but also within the EU territory for the purpose of identification of the child and the comparison of the fingerprints with data in VIS or other databases. ESP's should be bound by the same standards and ensure the protection of the rights and best interest of the child when taking fingerprints.

**Option 2.** All children are entitled to protection, and this option may have a positive impact with regards to the protection of all TCN children with a visa. However, for this age group there are practical problems with regards to the accurate collection of their fingerprints. Further investigation is preferred but it is to be expected that investments in scanners and software need to be made. This, in combination with the even smaller number of children below the age of 6 that are at risk of human trafficking or go missing this option could be concluded to lack both necessity and proportionality.

#### *Comparison of options*

The preferred option to emerge from this study is Option 1: lowering the fingerprinting age to 6 years.

Both options contribute to the policy objectives as identified in section 4.3. The policy impacts achieved by the options are in essence the same, they both facilitate in various ways in the protection of these children while traveling with a visa and after arrival in the Schengen area, but the main difference is that the number of children affected by the second option could be larger as it is encompassing all children.

However, the evidence currently available indicates that the group of children under 6 that is likely to be affected by the proposed adaptation is very small. This, in combination with the needed additional investigations into the feasibility of taking accurate fingerprints of this younger age group, and the presumed substantial investment costs that are associated with the purchase of new tailored machines result in the conclusion that necessity and proportionality are lacking.

## ANNEX 9: EXECUTIVE SUMMARY OF THE 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

### 1. Context of the study

#### *General context*

The fragmentation of information through different MSs and systems is inefficient. It could lead to errors when assessing a third-country national's situation and makes the border-crossing procedure difficult. These challenges have already been identified and described by the European Commission, which published in April 2016 a Communication on *Stronger and Smarter Information Systems for Borders and Security*<sup>170</sup> in which it commits to working to enable a **better use of the data collected**.

On 10 June 2016, the Justice and Home Affairs (JHA) Council endorsed a **roadmap to enhance information exchange and information management**. It included an action plan listing 50 actions to be undertaken by different stakeholders. Action 50 set an objective to address the **existing information gap in the (travel) documents of third-country nationals**.

The Final Report of the **High-Level Expert Group on Information Systems and Interoperability** of May 2017 identified an information gap at EU level concerning three types of documents: long-stay visas, residence permits and residence cards. The Report recommended the Commission to undertake, as a matter of priority, a feasibility study on the establishment of a "central EU repository containing information on long-stay visas, residence cards, and residence permits".

The High-Level Expert Group' sub-group on new systems further discussed the idea of such a database. It concluded that there were a number of similarities (in terms of desired functionalities, purpose and uses) with the database on short-stay visas: the Visa Information System (VIS). Hence, the VIS could potentially be extended to include long-stay and residence documents. In this respect, the Report on the VIS Evaluation (2016)<sup>171</sup> also included a recommendation for further development of the system to include these documents.

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170 Available at: [http://www.eulisa.europa.eu/Newsroom/News/Documents/SB-EES/communication\\_on\\_stronger\\_and\\_smart\\_borders\\_20160406\\_en.pdf](http://www.eulisa.europa.eu/Newsroom/News/Documents/SB-EES/communication_on_stronger_and_smart_borders_20160406_en.pdf) (see page 3).

171 Report from the Commission to the European Parliament and the Council the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT Evaluation COM(2016) 655 final.

In line with the High-Level Expert Group's recommendation, a first feasibility study was undertaken<sup>172</sup>. It analysed whether including long-stay and residence documents in a central database was technically feasible and desirable, compared to the creation of a new dedicated database to store data on these documents. It concluded that re-using the VIS structure to include these documents would be the best option. The study also concluded on the need to carry out further research and consultations on the **necessity and proportionality of such a measure**.

#### *Objective and scope of the study*

The European Commission's Directorate-General for Migration and Home Affairs (DG HOME) commissioned this study, with the aim of analysing the **necessity and proportionality** of including data on long-stay visas and residence documents in the VIS. As required by the necessity test, the study identified other options that could potentially also address the problem, using the input collected during stakeholder consultations. More specifically, the study aims at answering the following questions:

- What is the **problem** to be addressed?
- What are the **objectives** of the initiative?
- What are the legislative and non-legislative **options** that can be considered? How do they **compare**?
- What are the **impacts** on fundamental rights? Are they **proportionate** (does any other option achieve the objectives with less interference on the rights of the data subjects)?

The scope of the study does not cover and is without prejudice to MSs' and EU's competence to define the conditions of issuing long-stay and residence documents. The assessed measure would only address issues related to the lack of shared information on these documents at the borders and during the processing of a new application.

#### *Approach and methodology of the study*

To achieve its aim, the study follows the guidance provided in the **Better Regulation Guidelines** and Toolbox, in particular Tool 28<sup>173</sup>. It follows the instructions given in the EDPS Toolkit for assessing the necessity of the measure as regards its impact on the right to data protection.

The study used two main data collection tools:

- **Desk research** including, among others, the Treaties, the VIS and the SIS legal bases and relevant case law;
- **Stakeholder consultations**: consultations with the European Commission (including two meetings with the relevant Directorates-General), one interview with Frontex and one interview with eu-LISA were carried out. In addition, a questionnaire was sent to MSs. Finally, the study also took into account the results of the public consultation carried out by the Commission between November 2017 and February 2018.

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<sup>172</sup> Feasibility Study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits - Phase I: Analysis of Options, 2017.

<sup>173</sup> "Fundamental Rights & Human Rights".

## 2. What is the problem?

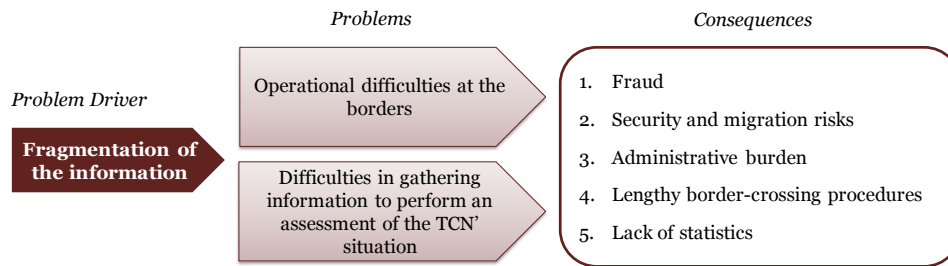


Figure 1 Problem definition

*Problem driver: fragmentation of the information on long-stay and residence documents*

For short-stay visas (stays in the EU of less than 90 days within a period of 180 days), there is a common format in all Schengen Member States and their application and issuance procedures have been harmonised. Information on these documents and their applications is stored in the VIS. The system is used by migration authorities and border guards, as well as national and European law enforcement authorities under special conditions. It provides reliable information on the authenticity and validity of short-stay visas and on applications, including those handled by other MSs.

Long-stay and residence documents are not fully harmonised, and in the case of residence cards, their format can differ from one issuing Member State to another. Moreover, there is no systematic exchange of information on these types of documents between Member States, which lead to operational difficulties at the borders and during the issuance process.

Border guards and migration authorities have no fast and systematic access to information on documents issued by another Member State. The available data is partial and scattered in different systems and tools (SIS, SLTD, FADO, bilateral contacts between MSs...) which leads to lengthy procedures to collect all the relevant data for the day-to-day activities of national authorities.

Member states and the respondents to the public consultation confirmed these issues: 86% agreed with the identified information gap that leads to problems in management of external borders and irregular migration within the EU.

*Problem: operational difficulties at the border and during the assessment of TCNs' situations*

From a border-control point of view, and during checks carried out within the territory of the MSs, it is crucial to ascertain the authenticity and validity of the documents. The holder of a long-stay or residence document can enter the Schengen Area via any external border-crossing points, and not all these documents possess the same, strong security features. Of the three documents, only residence permits and residence cards issued in a residence permit format have a chip<sup>174</sup>, thus allow electronic verification through Passive Authentication (using the respective country cryptographic certificate). In addition, while

<sup>174</sup> The check that the residence permit belongs to the bearer is done by reading the facial image from the chip of the document and comparing it with the one of the bearer. In case of failure or doubt, the stored fingerprints can be accessed. However, the information on the chip needs to be checked on its authenticity which can be done by exchanging cryptographic certificates between MSs (this topic is further discussed in section 3.1.2).

residence permits and long-stay visas format are harmonised, this is not the case for residence cards. Thus, the visual inspection of document' security features is made difficult by the different formats and – for some documents – the rarity with which they appear at certain border-crossing points, in addition to the heterogeneous use of security features.

Lastly, the border guards have different tools to gather information to assess the validity of a document, some automated (SIS and SLTD for lost, stolen, misappropriated and invalidated documents), others to be used at second-line border checks, like the FADO for images of authentic and forged documents. However, the information contained in the systems is not always sufficient (in terms of both quality and quantity). The SIS does not provide information on previous fraud attempt(s) by an applicant and cannot provide information on documents that have not been reported as stolen or lost. Border guards ultimately have to rely on bilateral contacts with the issuing Member States, via communication channels like SIRENE, but also by phone or emails. Consulted

MS complained about these procedures as being time-consuming and inefficient. For the large majority (80%) the lack of shared information on these documents was a hurdle to their day-to day activities.

From a migration assessment point of view, it is important to have information on relevant elements of the situation of a person to assess accurately whether the applicant would pose a migration or a security risk. In addition to checking national systems, the only EU-level exchange of information migration authorities have at their disposal is the SIS for alerts on entry bans. There is no dedicated tool to share information on applications and reasons for refusal, which might be linked to migration or security risks.

*Consequences: fraud, security and migration risks, administrative burden and lack of statistics*

This situation leads to five main consequences:

1. **Administrative burden:** as migration and border control authorities have to go through different procedures in different systems and tools to gather an incomplete picture on the TCN and her/his document. The bilateral exchange of information is the last resource they use, which has different inherent constraint: language barriers and long waiting times.
2. **Lengthy border-crossing procedures:** the above-mentioned issues at borders directly impacts the journey of bona fide TCNs holding long-stay or residence documents, who suffers **delays** and who **risk being wrongly denied entry or passage**. When there is a doubt on a document, the further checks and bilateral contact between MS are carried-out at second-line border check, which means that the TCN has to wait at the borders for his/her situation to be clarified. Ultimately, this situation can lead to the infringement of the **Freedom of Movement** of bona fide TCN who reside in the territory of a Member State (Article 21 TFEU and Directive 2004/38) if they are not allowed to cross the internal (during an ad hoc check) or external borders due their document not being trusted.
3. **Document fraud:** the information gap can create blind spots in the border-management framework and foster fraud on less secured documents. This is especially important when considering the existing and ongoing strengthening of border checks for other categories of travellers (e.g. mandatory checks of EU citizens at external

borders, ETIAS for short-stay visa-exempt travellers, VIS for short-stay visa holders and EES for all short-stay visitors). This reinforcement of security and border management measures could motivate people with ill intentions to look for other, **less secure types of documents** that would allow them to enter the Schengen Area and move across Member States. This phenomenon has already been observed with ID cards, whereby fraudsters target less secure EU ID cards for intra-Schengen movements<sup>175</sup> (fraud based on the ‘weakest link’ approach).

In addition, obtaining authentic documents based on **false application documents** (birth, marriage and death certificates) is one of the biggest challenges in terms of fraud as it is very difficult to detect. This type of fraud is increasingly attractive for fraudsters, as the document become more secure. Better information exchange between MSs during the application process could help identify more cases<sup>176</sup>.

Type of Document	2014	2015	2016	Share of total	% change on prev. year	Highest share Type of Fraud
Passports	4 949	4 065	2 770	34	-32	Impostor (29%)
Visas	1 617	1 934	2 115	26	9.4	Fraudulently obtained (59%)
ID cards	1 400	1 203	1 177	14	-2.2	Counterfeit (37%)
Residence permits	1 507	1 383	1 166	14	-16	Counterfeit (42%)
Stamps	1 047	903	833	10	-7.8	Counterfeit (85%)
Other	233	192	206	2.5	7.3	Counterfeit (77%)
<b>Total</b>	<b>10 753</b>	<b>9 680</b>	<b>8 267</b>	<b>100</b>	<b>-15</b>	

Table 1: Fraudulent documents – Fronex Risk Analysis for 2017

- Security and migration risks:** the fraud problem inevitably leads to a security issue for the EU. Fraud is used by **organised crime** as a mean for a series of **related serious offences**, notably for terrorism, human trafficking, migrant smuggling or drug and firearm trafficking<sup>177</sup>.

In addition, forged documents are the gateway used by irregular migrants to enter and move within the EU. According to Frontex’s 2017 Annual Risk Analysis, smugglers frequently provide migrants with fraudulent travel and identity documents. The agency observes that both the quantity and quality of fraudulent documents circulating in the EU have increased in recent years<sup>178</sup>. In fact, smugglers are supported by criminal networks with access to expert counterfeiters who, financed by the strong demand, have set-up print shops<sup>179</sup>.

- Lack of statistics:** as observed in the 2017 study<sup>180</sup>, the analysis of fraud related to long-stay and residence documents is particularly complex due to a lack of available data on the problem. On the one hand, and as explained above, any statistic on

175 Frontex, *Risk Analysis for 2017*, page 23, [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annual\\_Risk\\_Analysis\\_2017.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf)

176 Europol funded the development of a handbook on the detection of false application or “breeder” documents. It contains samples and short descriptions of European ID documents and breeder documents. It is not used as much as it should be according to the EC Communication on Action plan to strengthen the European response to travel document fraud.

177 Communication from the Commission to the European Parliament and the Council on an “Action Plan To Strengthen The European Response To Travel Document Fraud” of December 2016, COM(2016)790.

178 Ibid, p. 22.

179 Ibid.

180 Feasibility Study to include in a repository documents for Long-Stay visas, Residence and Local Border Traffic Permits - Phase1: Analysis of Options, 2017.

detection of forgeries is bound to underestimate the actual size of the problem as the successful fraudsters go undetected. On the other hand, there is a shortage of statistics at EU level concerning this category of TCNs:

- The data is kept at national level in MSs' information systems;
- Eurostat does not have statistics on long-stay visas and the statistics on residence permits are limited;
- Frontex data does not distinguish between residence permits and residence cards and sometimes does not distinguish the fraud between Schengen (short-stay) and long-stay visas. Similarly, frauds on the breeder documents are complex to quantify as the data is kept at national level.

### 3. What are the objectives of the initiative?

#### *General objectives*

In line with the problem defined above, the study identified the following general objectives, validated by the European Commission:

- I. To improve security within the EU and at its borders;
- II. To facilitate TCNs' right to move and reside freely within the EU;
- III. To improve the management of the Schengen external border.

#### *Specific objectives*

Two main specific objectives and two ancillary ones supplement the general objectives:

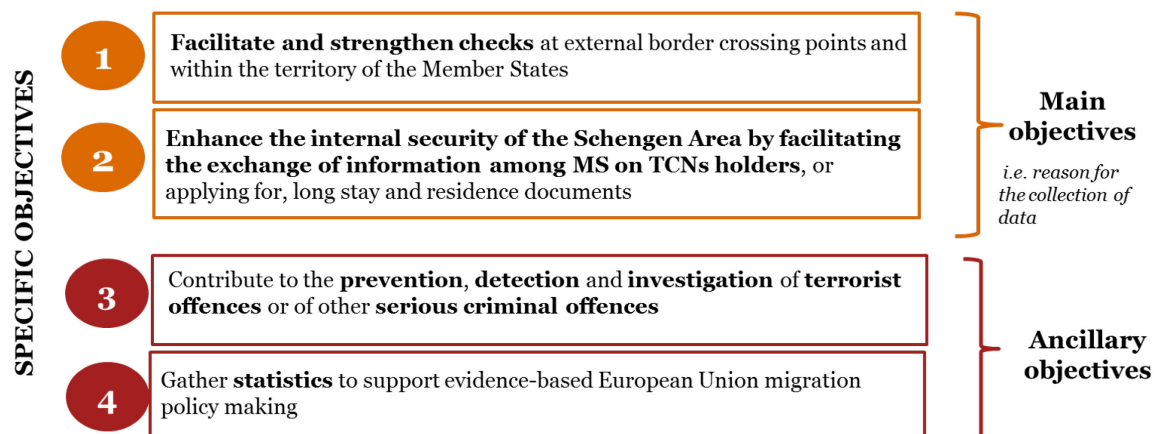


Figure 2: Policy objectives

### 4. Why an EU action?

To address the problem, MSs could act on an individual basis, by strengthening their documents, their issuance process, document checks at border-crossing points or by reinforcing or systematising bilateral cooperation.

However, this approach has inherent limitations:

- **Its benefits are automatically dependent on the number of MSs committed to the initiative(s).** The more MSs that implement individual actions, the more secure

the EU territory. The action of all MSs would therefore achieve greater benefits – which EU action would necessarily entail, but which is unlikely without it<sup>181</sup>;

- **Part of the problem cannot be solved without the coordination of all MSs.** There is currently no way for one MS to know if other MSs possess relevant long-stay information on a person without contacting each one of them. This process would be overly cumbersome and lengthy, and is therefore infeasible;
- **Differences in MSs’ security levels may lead to weak points for the Schengen Area.** For example, some MSs, on their own initiative, may continue to implement policies towards harmonising long-stay documents by gradually phasing out problematic ones and introducing improved security features based on international standards. However, this approach would still result in a situation where the security of documents would be inconsistent: documents from some MSs would still be less secure than documents from others, therefore constituting a weakness for the security of the Schengen Area as a whole;
- **Additional difficulties may arise from uncoordinated actions.** For example, the different bilateral cooperation processes are likely to abide by different rules. Systemising them would increase workload and possibilities for confusion for border guards, thus increasing the possibility of mistakes.

Therefore, **Member States alone cannot adequately address the problem**: they can, at best, partially address it. More than 90% of the MS consulted considered necessary an EU legislative response to address the information gap.

## 5. What are the options to address the problem?

The study identifies five options, some of them including sub-options that could potentially address the problem.

Table 2: Policy options

<b>No action</b>	
<b>Option 1: No policy change / “do nothing”</b>	
<b>Non legislative action</b>	
<b>Option 2: Improve the current exchange of information and checks</b>	
2a	Improve the exchange of bilateral information on a case-by-case basis
2b	Improve the feeding and use of information in the SIS as regards alerts on withdrawn long-stay and residence documents <sup>182</sup> (improve amount/quality of information fed into the system) (e.g. whether a residence permit was stolen, invalidated, misappropriated or lost)
2c	Promote the use of security features for documents containing a chip: Passive Authentication and Extended Access Control)
<b>Legislative action</b>	
<b>Option 3: Further harmonise and secure long-stay visas and residence documents (e.g. security features)</b>	
<b>Option 4: Create an interconnection between national databases that would allow all MSs to query</b>	

181 As mentioned in footnote 23, the United Kingdom, Ireland and Denmark would not be bound by EU action in the area of freedom, security and justice.

182 Council Decision 2007/533/JHA, article 38.2(e)

*each other's relevant national databases*

**Option 5: Extend the scope of the VIS to include long-stay visas and residence documents**

5a	Store data on issued documents (including biographical data provided for in the document) and the document's history (withdrawn, renewed, etc.)
5b	Also store data on all applications (e.g. the fact that an application has been lodged, when, where, by which MS, for what type of document, main reason for refusal if refused, etc.);

## 5. Findings and conclusions of the study

### *Impact on fundamental rights*

The study assesses the impacts on fundamental rights of the **options and sub-options that meet the two main policy objectives**. Therefore, the **analysis focuses on options 4, 5.a and 5.b**.

### *Necessity*

The table below summarises the assessment, on a scale of “----” (strong negative impact) to “++++” (strong positive impact).

Table 3: Analysis of impacts on fundamental rights

<b>Policy options</b>	<b>Article 2</b>	<b>Article 7</b>	<b>Article 8</b>	<b>Article 45(2)</b>
<b>Option 4: decentralised database</b>	+	-	-	+ (if residence cards are included) 0 (if they are not)
<b>Option 5: Include long-stay documents in the VIS</b>				
Sub-option a): store data on issued documents	+	--	--	++ (if residence cards are included) 0 (if they are not)
Sub-option b): store data on all applications	++	---	---	++ (if residence cards are included) 0 (if they are not)

As shown above, options 4, 5.a and 5.b have negative impacts on the right to privacy and the right to data protection. The rights to privacy, to personal data protection and to freedom of movement are not absolute and may be limited, provided the limitations are:

- Provided for by law;
- Respect the essence of the rights;
- Meet objectives of general interest or the need to protect the rights and freedom of others;
- Necessary;
- Proportionate<sup>183</sup>.

All options would meet the three general objectives, but to a different extent, as summarised by the table below.

Table 4: Effectiveness in meeting the objectives

<b>Objective Option</b>	<b>General objective I: security</b>	<b>General objective II: freedom of movement</b>	<b>General objective III: management of border</b>	<b>Specific objective 1: strengthen checks</b>	<b>Specific objective 2: information-exchange</b>
<b>3: further harmonise and secure</b>	+	+ (if residence cards are included) 0 (if they are not)	++	+	0
<b>4: decentralised database</b>	+	+ (if residence cards are included) 0 (if they are not)	+	+	+
<b>5.a: store data on issued documents</b>	+	++ (if residence cards are included) 0 (if they are not)	++	+	0
<b>5.b: store data on all applications</b>	++	++ (if residence cards are included) 0 (if they are not)	++	+	+

183 EDPS (April 2017) “Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit”, page 4

The policy objectives to be achieved cannot be addressed by less intrusive measures than option 5.b. Other less intrusive measures were considered but they do not reach the objectives at all or only partially. The more intrusive measure, option 5.b, is therefore considered as necessary.

### *Proportionality*

The limitations to fundamental rights brought about by option 5.b are proportionate to the desired aim, as demonstrated below.

**The limitation would bring about significant advantages:** limiting the rights would enable the general and specific objectives to be met. **It would also entail some disadvantages as it would negatively affect the right to data protection:** option 5.b entails collecting, storing and accessing 17 data items related to issued long-stay documents issued and applications. It relies on the VIS, a central database, for storage. This limited data set would be collected, on about 22 million people<sup>184</sup> (including residence cards).

**However, this limitation on the right to data protection is minor and strictly limited to what is necessary** to achieve the objectives. The data set does not encompass the special categories of data that are considered particularly sensitive, and contains little data that would yield information on a person's private life. The "reason for the negative decision" might, if left as a free text field, represent a risk to privacy or reveal personal sensitive data (e.g. health data) on rare occasions. The use of a drop-down menu, tick boxes or another technical feature in the form could prevent this. This limited data set would be collected, at most, on about 22 million people<sup>185</sup> (including residence cards). Only personal data that is adequate and relevant for the purposes of the processing would be collected and processed<sup>186</sup>. This data set does not go beyond what a border guard currently sees when examining a long-term visa, residence card or permit presented at the border.

Thus, the limitation is justified as the **advantages outweigh the disadvantages** caused with respect to the exercise of fundamental rights; **it is proportionate** to the desired objectives as it reaches a fair balance between them and the fundamental rights at stake (in this case data protection).

### *Comparison of options: coherence, effectiveness and cost-benefit*

For each of the options and sub-options, the study analysed the following criteria (in addition to impact on fundamental rights, necessity and proportionality):

- **Coherence:** is the option coherent with the overarching objectives of EU policies?  
All options except option 1 ("do nothing") are coherent with the overarching objectives of EU policies.

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184 Amount of residence cards for ≈1 million people.

185 Amount of residence cards for ≈1 million people.

186 Biographical and document data would be used to compare with the data of the presented document and to detect forged, counterfeited and stolen blank documents. Decision data would be used by migration authorities to inform their decisions during the application process. Data generated by the repository would be used to structure the database.

- **Effectiveness:** does the option meet the objectives?

Sub-option 5.b is the only option that fully addresses the second objective, as storing data on documents and applications would offer migration authorities a complete picture on the situation of the TCN applying for a new document.

- **Efficiency:** do the benefits of the option outweigh its costs?

Efficiency was analysed for the options and sub-options that meet the two main policy objectives (4, 5.a and 5.b).

Option 4 – creating a decentralised database among all MSs with different data sets, technical standards and access rights (due to the variable geometry of the topic of legal migration) – is likely to be **very expensive and time-consuming to implement** and pose major difficulties deriving from the different governance, legal basis and technical solutions used across national systems. Option 5 (either sub-option) offers significant advantages and a much better cost-benefit.

The table below summarises the assessment of each option against the criteria.

Table 5: Comparison of policy options

<i>Option</i>	<i>Coherence</i>	<i>Effectiveness</i>	<i>Efficiency</i>
1 No change	0	0	
2a Improve existing: bi-lateral exchange of information	++	+	
2b Improve existing: use of the SIS	++	+	
2c Improve existing: use of the electronic document authentication	++	+	
3 Further document harmonization	++	+	+ <sup>187</sup>
4 Distributed database	++	+	--
5a Extend the VIS with documents data	+++	++	++
5b Extend the VIS with documents and application data <sup>188</sup>	+++	+++	++

#### *Best-scoring option*

Option 5b “Extend the scope of the VIS to include long-stay visas and residence documents – Store also data on all applications” is the preferred option for the following reasons:

- **Necessity:** There is no equally effective but less intrusive measure available: thus, the measure is necessary;

187 The option scored positively for efficiency at securing the borders in term of efficiency based on the assessment included in the IA of the DG JUST proposal. However, the benefits cover only one of the two objectives in scope for this legislative initiative. As explained through the study and in particular in section 3.2, this option will not help MS cooperation, nor the exchange of information to strengthen the issuance process.

188 Not the full application data, but only whether a person has applied for a document and what was the outcome.

- **Proportionality:** The measure's impact on fundamental rights, including data protection and privacy, is limited while it brings significant advantages: the measure is proportionate;
- **Coherence, effectiveness and efficiency:** The measure meets the criteria more than any other alternative. In particular, option 5 would allow **triangular verification** (person->document->system), which has proven to be a successful approach for the efficient tackling of unlawful use of documents through the correct assessment of (i) their validity and authenticity and of (ii) the identity of the holder. It provides a higher level of security than just reinforcing the documents, as not only would work even when the chip cannot be read or verified, but it would also strengthen the application process. The system could be consulted easily at the border by scanning the passport, thus simplifying the process at the border.

Should the collection of fingerprints be harmonised across MS for all documents, these could be stored centrally further strengthening the EU against identity frauds, just like what is done for short stay travellers whose biometrics are collected in the EES and VIS. Finally, a central system setup would be able to leverage on the tools introduced with the recent interoperability legislative proposal and benefit in terms of efficient use of the information available.

Overall, this option would have a positive societal impact both on EU citizens who would benefit of the additional security of the Schengen Area, and on TCNs who would benefit of a potentially faster border crossing. .

## 6. The way forward/what are the next steps

This study is a **first step** towards the possible future adoption and implementation of the measure. The European Commission will present an **impact assessment building** on the work carried out during the study.

The **final option, sub-option, design and set-up to be retained depend on political and policy decisions**. Based on these decisions, the European Commission is expected to present legislative amendments to the VIS.

## ANNEX 10: CONSIDERATIONS ON THE USE OF BIOMETRIC DATA (TOPIC 3)

When coupled with biometric information, border checks are even more secure. Indeed, the **triangular verification** (person->document->system) supported by biometrics has proven to be a successful approach for the efficient tackling of unlawful use of documents through the correct assessment of their **validity** and **authenticity** and of the **identity** of the holder.

Falsification techniques evolve very quickly and criminal networks are increasingly specialised, developing new forms of forgery (manipulation of anti-forgery devices and techniques to circumvent biometric checks). As imposter fraud and fraudulent acquisition of authentic documents are increasing and counterfeiting slightly decreasing, the triangular verification is a better-equipped technique to deal with the new trends in document fraud. As observed by Frontex<sup>189</sup>, “the roll-out of the VIS and the obligation as of October 2014 for border-control authorities to check the fingerprints of all relevant visa holders are likely to reduce the number of Schengen visa impostors in the future and (...) increase the likelihood of frauds of other types of travel documents”.

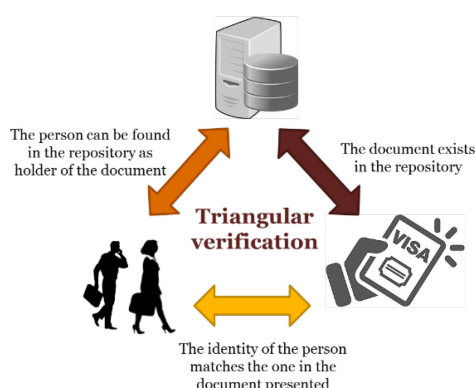


Figure 1: Triangular verification

Lastly, the inclusion of biometric data in the VIS could allow for the **identification of undocumented TCNs**, in cases in which they entered the Schengen Area via a long-stay or residence document before overstaying.

It is, however, important to note some shortcomings in terms of biometric data available for long-stay and residence documents. These documents are nationally issued, as opposed to short-stay “Schengen” visas, with issuance process has been fully harmonised at EU level. Although the regulations on the harmonisation of long-stay visas and residence permits set a minimum biometric data to be collected, the situation very much differs from one Member State to another. In fact, not all Member States collect and store biometrics and even when they do, a different number of fingerprints is collected with different quality criteria. This means that to enable such a use-case, the way the documents are

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issued would have to be harmonised to include the requirements of capturing and storing biometric identifiers according to common standards.

Nevertheless, knowing MS collect biometric data for long-stay visas and residence permits (as laid down by the harmonised formats of these documents) and considering the technical capabilities for the proposed Share BMS, it would be **technically feasible to work with the limited set of biometric data** as currently contained in the documents (only with facial image for instance). The limitations observed are based on data protection considerations.

In light of the technical feasibility, of the potential benefits stemming from the use of biometrics to fight frauds and to establish a person centric storage of information, the inclusion of biometrics could be considered after a period of assessment

**ANNEX 11: AVAILABLE POLICY OPTIONS OVERVIEW (PREFERRED OPTION IN BOLD)**

Copy of the travel document		
Option 1.0	Status quo	
<b>Option 1.1</b>	<b>Include a digital copy of the travel document in the central VIS (centralised)</b>	
Option 1.2	Include a digital copy of the travel document in national visa systems (decentralised)	
<b>Sub-option A</b>	<b>Storage of biographical page only</b>	
Sub-option B	Storage of all used pages of the applicant's travel document	
Fingerprinting of minors		
Option 2.0	Status quo	
<b>Option 2.1</b>	<b>Lowering the fingerprinting age to 6 years</b>	
Option 2.2	Lowering the fingerprinting age including all ages	
Long-stay visas and residence documents		
Option 3.0	Status quo	
Non-legislative	Option 3.1.a	Improve the exchange of bilateral information on a case-by-case basis.
	Option 3.1.b	Improve the feeding and use of information in the SIS as regards alerts on withdrawn long-stay and residence documents
	Option 3.1.c	Promote the use of security features for the documents containing a chip: Passive Authentication and Extended Access Control
Legislative	Option 3.2	Further harmonise and secure long-stay and residence documents
	Option 3.3	Create an interconnection between national databases that would allow all MSs to query each other's relevant national databases
	Option 3.4.A	Integration in the VIS – without data on rejected applications
	<b>Option 3.4.B</b>	<b>Integration in the VIS – with data on rejected applications</b>
Migration and security checks		
Option 4.0	Status quo	
Option 4.1	Systematic and automated check against available databases (ETIAS model)	
<b>Option 4.2</b>	<b>Automated cross-checks + screening rules</b>	

