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**DRAFT STATEMENT OF THE COUNCIL'S REASONS**

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| Subject: | Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 603/2013, (EU) 2016/794, (EU) 2018/1862, (EU) 2019/816 and (EU) 2019/818 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the Visa Information System<br>– Draft Statement of the Council's reasons |

## I. INTRODUCTION

1. After a thorough evaluation of the VIS, on 16 May 2018 the Commission submitted a legislative proposal to amend the VIS Regulation[1] (hereinafter "Regulation amending the VIS').

2. At its meeting on 19 December 2018, the Committee of Permanent Representatives adopted a mandate to enter into negotiations with the European Parliament[2].

3. The European Economic and Social Committee adopted its opinion on 19 September 2018[3].

4. The European Data Protection Supervisor delivered its opinion on 12 December 2018[4].

5. At the request of the European Parliament, the EU Agency for Fundamental Rights delivered an opinion on 30 August 2018[5].

6. On 13 March 2019, the European Parliament adopted its Position at first reading[6].

7. The Council and the European Parliament entered into negotiations in October 2019 with a view to reaching an agreement at the stage of the Council's position at first reading ("early second reading agreement").

8. During the course of the negotiations it became clear that certain provisions were missing from the Commission proposal - the so-called "VIS consequential amendments". These are the amendments to be made to the legal acts on the EU information systems and databases as a consequence of the automated queries by VIS to these other systems. Similar consequential amendments had been proposed by the Commission for ETIAS[7].

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1 8853/18.
2 15726/18.
3 EESC 2018/03954, OJ C 440, 6.12.2018, p. 154–157.
4 Summary of the Opinion of the European Data Protection Supervisor on the Proposal for a new Regulation on the Visa Information System, OJ C 50, 8.2.2019, p. 4–8.
5 FRA Opinion – 2/2018. https://fra.europa.eu/en/publication/2018/revised-visa-information-system-and-its-fundamental-rights-implications
6 T8-0174/2019, 7401/19.
7 See COM (2019) 3 final and COM (2019) 4 final.

9. Due to the variable geometry in Member States' participation in EU policies in the area of freedom, security and justice, it was legally possible to include only one set of consequential amendments concerning the modification of legal instruments in the area of the Schengen *acquis* related to external borders in the Regulation amending the VIS, while other provisions not belonging to that acquis had to be included in a separate legal instrument, namely the Regulation on the VIS consequential amendments (subject-matter of this Statement of the Council's reasons).

10. On 17 June 2020, the Committee of Permanent Representatives amended the Council's mandate, in order to include the "VIS consequential amendments"[8]. Having already adopted its Position at first reading, the European Parliament negotiating team indicated that it would define its position on this new set of provisions during the course of the interinstitutional negotiations.

11. After six political trilogues and numerous technical meetings, the negotiations were successfully concluded on 8 December 2020, with the European Parliament and Council reaching a compromise on the text of two Regulations:

– Regulation amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System (hereinafter "the Regulation amending the VIS"), and

– Regulation amending Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 as regards the establishment of the conditions for accessing other EU information systems for VIS purposes (hereinafter "the Regulation on the VIS consequential amendments", subject-matter of the present Statement of the Council's reasons).

12. On 22 January 2021, the Committee of Permanent Representatives carried out an analysis of the final compromise text with a view to agreement.

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**8** 8787/20.

13. On 27 January 2021 the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE committee) confirmed the political agreement and on 1 February the LIBE Chair sent a letter to the Chair of the Committee of Permanent Representatives confirming that, should the Council approve the two Regulations at first reading, after legal-linguistic revision, the Parliament would approve the Council's position at its second reading.

14. On 3 February 2021 Committee of Permanent Representatives confirmed the political agreement on the compromise text of the Regulations.

15. Denmark is not taking part in the adoption of the Regulation on the VIS consequential amendments and is not bound by it or subject to its application. Given that this Regulation, insofar as its provisions relate to SIS as governed by Regulation (EU) 2018/1862, builds upon the Schengen *acquis*, Denmark will, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

16. Insofar as its provisions relate to SIS as governed by Regulation (EU) 2018/1862, Ireland is taking part in the Regulation on the VIS consequential amendments. Insofar as its provisions relate to Europol, Eurodac and to ECRIS-TCN, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

17. As regards Iceland, Norway, Switzerland and Liechtenstein, the Regulation on the VIS consequential amendments constitutes, insofar as it relates to SIS as governed by Regulation (EU) 2018/1862, a development of the provisions of the Schengen *acquis*.

## II. OBJECTIVE

18. The VIS – established by Council Decision 2004/512/EC (the VIS Decision) and by Regulation (EC) No 767/2008 – is the EU information system for facilitating the short-stay ('Schengen') visa procedure and helping visa, border, asylum and migration authorities to check third-country nationals who need a visa to travel to the Schengen area. The VIS connects Member States' consulates around the world and all their external border crossing points.

19. The Regulation amending the VIS aims at further developing the VIS to better respond to new challenges in visa, border and security policies.

20. The Regulation on the VIS consequential amendments lays down the conditions under which the VIS consults the data stored in Eurodac, SIS and ECRIS-TCN, as well as Europol data, for the purposes of identifying hits under the automated queries specified in the Regulation amending the VIS.

21. The conditions of access to other EU information systems and databases queried by VIS were missing in the Commission proposal, mainly because it had been presented before the adoption of several legal acts on other EU information systems and databases and the Interoperability Regulations.

22. The Council Position at first reading closes this gap and takes into account the new legislative landscape for interoperability, which has evolved since the tabling of the proposal.

23. While the technical amendments to the Regulations which are part of the Schengen *acquis* related to borders (VIS[9], EES[10], ETIAS[11], SIS Return[12], SIS Borders[13] and Interoperability Borders[14]) are included in the Regulation amending the VIS, the amendment to the

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9 Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60–81.

10 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, OJ L 327, 9.12.2017, p. 20–82.

11 Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, OJ L 236, 19.9.2018, p. 1–71.

12 Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals, OJ L 312, 7.12.2018, p. 1–13.

13 Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 7.12.2018, p. 14–55

14 Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU)

Regulations which are not part of the Schengen *acquis* or constitute Schengen-Police texts (Eurodac[15], Europol Regulation[16], SIS Police[17], ECRIS-TCN[18] and Interoperability Police[19]) are included in this separate legal instrument due to the variable geometry of Member States' participation in EU policies in the area of freedom, security and justice.

24. However, the two Regulations were negotiated as a package and are meant to work seamlessly together to enable the comprehensive operation and use of the VIS system.

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2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, OJ L 135, 22.5.2019, p. 27–84.

15 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1–30.

16 Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53–114.

17 Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, OJ L 312, 7.12.2018, p. 56–106.

18 Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726, OJ L 135, 22.5.2019, p. 1–26.

19 Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, OJ L 135, 22.5.2019, p. 85–135.

## III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

### A. General

25. The European Parliament and the Council conducted negotiations with the aim of concluding an agreement on the basis of a position of the Council at first-reading that the Parliament could approve as such at its second reading. The text of the Council Position at first reading on the Regulation on the VIS consequential amendments fully reflects the compromise reached between the two co-legislators, assisted by the European Commission.

### B. Key issues

**Amendments to Regulations (EU) 603/2013**

26. The Council Position at first reading amends the Eurodac Regulation in order to:

- grant access to Eurodac to the competent visa authorities in order to consult data in a read-only format;
- connect Eurodac to the European search portal established by Article 6 of Regulation (EU) 2019/818 to enable automated processing by the VIS; and
- keep a record or log of each data processing operation carried out within Eurodac and VIS.

**Amendments to Regulations (EU) 2016/794**

27. The Council Position at first reading amends the Europol Regulation in order to:

- allow Europol to provide an opinion following a consultation by VIS under the automated processing, and
- enable the VIS designated authorities, for the purposes of the VIS Regulation, to have indirect access to Europol data on the basis of a hit/no hit system.

**Amendments to Regulations (EU) 2018/1862**

28. The Council Position at first reading amends the SIS Police Regulation in order to:

- keep logs of each data processing operation carried out within SIS and VIS;
- grant national competent authorities access to data entered in SIS for the purpose of manually verifying hits triggered by automated queries from the VIS and assessing whether an applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security; and
- connect the Central System of SIS to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/818 to enable VIS automated processing.

**Amendments to Regulations (EU) 2019/816**

29. The Council Position at first reading amends the ECRIS-TCN Regulation in order to:

- include in the data record of a convicted third-country national a flag indicating, for the purpose of VIS, if the third-country national concerned has been convicted for a terrorist offence or a serious criminal offence;
- indicate that this flag will be erased automatically 25 years after the creation of the flag, as far as convictions related to terrorist offences are concerned, and 15 years after the creation of the flag, as far as convictions related to other serious criminal offences are concerned;
- make the flags and the code of the convicting Member State(s) accessible and searchable by the VIS Central System for the purpose of the verifications, where hits are identified following automated processing by VIS;
- in the event of a hit, allow the central system or the CIR to automatically provide the competent authority with information on the Member States holding criminal record information on the third country national;

– connect ECRIS-TCN to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/818 to enable automated processing by VIS;

– grant the VIS designated authorities the right to access ECRIS-TCN data in the CIR for the purpose of performing the tasks pursuant to the VIS Regulation; and

– keep a log of each ECRIS-TCN data processing operation carried out within the CIR and VIS.

30. The European Parliament initially called for a provision to be inserted in the ECRIS-TCN Regulation tasking the Commission to evaluate, within one year after the start of operations of ECRIS-TCN, whether the querying of ECRIS-TCN by the VIS was necessary in supporting the VIS's objective of assessing whether an applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security under Regulation (EC) No 767/2008. The Council Position at first reading integrates the assessment of whether the querying of ECRIS-TCN by the VIS has contributed to supporting the abovementioned objective into the report the Commission is required to present three years after the start of operations of the revised VIS.

**Amendments to Regulation (EU) 2019/818**

31. The Council Position at first reading amends the Interoperability (Police) Regulation in order to adapt it for the purposes of revised VIS.

## IV. CONCLUSION

32. The Council's Position at first reading fully reflects the compromise reached in the negotiations between the European Parliament and the Council, facilitated by the Commission. The Council believes that its position at first reading represents a balanced package and that, once adopted, the Regulation amending Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 as regards the establishment of the conditions for accessing other EU information systems for VIS purposes, will make it possible to connect the VIS and data from other EU information systems and Europol and, by doing so, to allow the systems to supplement each other with a view to improving the management of the external borders, contributing to preventing and combating illegal immigration and ensuring a high level of security within the area of freedom, security and justice of the Union, including the maintenance of public security and public policy and safeguarding the security in the territories of the Member States.

33. This compromise is confirmed by the letter that the Chair of the LIBE Committee addressed to the Chair of the Committee of Permanent Representatives on 1 February 2021. In this letter, the Chair of the LIBE Committee indicates that he will recommend to the members of his Committee, and subsequently to the plenary, that they accept the Council's position at first reading without amendments in the Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.