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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. prev. doc.:	7906/20
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA – Amendment to the mandate for negotiations with the European Parliament – Approval of a letter

1. The Visa Information System (VIS) - established by Council Decision 2004/512/EC and by Regulation (EC) No 767/2008 (the VIS Regulation) - 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. The system already performs biometric matching (of fingerprints) for identification and verification purposes. It has been operational since 2011.

2. After a thorough evaluation, on 16 May 2018 the Commission submitted a legislative proposal amending the VIS Regulation¹, which is considered to be an important initiative in the context of ensuring interoperability between systems and databases in the area of justice and home affairs.
3. At its meeting on 19 December 2018, the Permanent Representatives Committee agreed on the mandate for negotiations with the European Parliament².
4. The negotiations started in October 2019 and are ongoing.
5. In the autumn of 2019, the Commission brought to the attention of the co-legislators the fact that certain provisions were missing from the VIS proposal and thus from the Council and EP positions as well. They concern technical issues such as:
 - amendments that need to be made to legal acts which establish and regulate the operation of other EU information systems and databases, to allow them to be queried for the purpose of VIS automated checks (the ETIAS Central System, the Schengen Information System ('SIS'), the Visa Information System ('VIS'), the Entry/Exit System ('EES'), ECRIS-TCN, Eurodac, Europol data and the Interpol databases (the Interpol Stolen and Lost Travel Document database ('SLTD') or the Interpol Travel Documents Associated with Notices database ('TDAWN'));
 - granting VIS designated authorities and visa authorities access to other EU information systems;
 - interoperability with those other EU information systems.

The overall aim of the amendment of the Council mandate is therefore twofold. First, to set out the technical amendments necessary to fully set up the VIS system by amending the legal acts of the EU information systems that VIS queries, involving automated processing of personal data. Second, to take into account the new legislative landscape for interoperability, which has evolved since the VIS proposal was tabled in May 2018³.

¹ 8853/18.

² 15726/18.

³ ETIAS (Regulations (EU) 2018/1240 and 2018/1241), SIS package (Regulations (EU) 2018/1860, 2018/1861 and 2018/1862), ECRIS-TCN (Regulation (EU) 2019/816) and the Interoperability package (Regulations (EU) 2019/817 and 2019/818).

6. At the JHA Counsellors meeting of 27 November 2019, delegations broadly supported the Presidency suggestion that the missing technical elements would be incorporated as part of the ongoing interinstitutional negotiations, i.e. without a new Commission proposal, in order to save time and simplify the process. At the second political trilogue on 11 December 2019, the EP agreed as well on this approach.
7. On 17 April 2020, the Presidency presented a set of text proposals on these missing provisions⁴. Due to the variable geometry in Member States' participation in EU policies in the area of freedom, security and justice, it was necessary to split the provisions in two separate legal instruments⁵ which will nonetheless work seamlessly together to enable the comprehensive operation and use of the system.
8. On the basis of delegations' comments and text proposals⁶, the Presidency presented slightly revised texts⁷ that it believed could be acceptable to a broad majority of delegations, with a view to amending the original mandate for negotiations with the European Parliament, in order to include these missing technical provisions.
9. The Permanent Representatives Committee is invited to:
 - approve the texts set out in Annexes I and II to this note, as an amendment to the original Coreper mandate approved in December 2018, with a view to negotiating them with the European Parliament in the framework of the current VIS negotiations. Compared to the latest version of the Presidency texts distributed to the JHA Counsellors (7906/20), the texts enclosed include only a few factual corrections⁸ and minor cross-reference corrections⁹ (marked in **~~bold/underline/strikethrough~~**);

⁴ 7326/20.

⁵ The "Schengen text", i.e. the new provisions amending the VIS, EES, ETIAS, SIS Return, SIS Borders and Interoperability Borders, and the "non-Schengen and Schengen-Police text", i.e. the new provisions amending Eurodac, Europol Regulation, SIS Police, ECRIS-TCN and Interoperability Police.

⁶ WK 4859/2020 REV 2 and WK 5780/2020.

⁷ 7906/20.

⁸ See recital 5 and Article 4, point (4) (i.e. Article 5(1)(c) of Regulation 2019/816) of the draft Regulation in Annex II.

⁹ See lines 385a and 943c in Annex I.

- approve the letter to the European Parliament, as set out in Annex III to this note, informing it of the splitting of the amendments between those to be included in the draft Regulation amending VIS and those to be included in a separate draft Regulation amending Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 for the reasons explained above in point 7.
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TEXT PROPOSALS TO BE INCLUDED IN THE 4-COLUMN TABLE¹**Line 154 (and line 614): addition of new paragraphs to current Article 9a (and Article 22b)**

- 3d. As regards Europol data referred to in point (f) of paragraph 3a, the automated processing shall receive the appropriate notification in accordance with Article 21(1b) of Regulation (EU) 2016/794.
- 3e. A hit shall be triggered where all or some of the data from the application file used for the query correspond fully or partially to the data present in a record, alert or file of the information systems referred to in paragraph 3. The Commission shall, by means of an implementing act, define partial correspondence, including a degree of probability.

New line 306a: new article 27a on interoperability*Article 27a****Interoperability with other EU information systems and Europol data***

Interoperability between the VIS and the EES, the ETIAS, the SIS, the Eurodac, the ECRIS-TCN and Europol data shall be established to enable the automated processing of the queries to other systems referred to in Articles 9a to 9cab and 22b. Interoperability shall rely on the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 and Article 6 of Regulation (EU) 2019/818.

New line 385a: addition of new paragraph 1a in Article 34 (Keeping of logs) on automated checks

- 1a. For the queries and consultations referred to in Articles 9a to 9cab and 22b, a log for each data processing operation carried out within the VIS and, respectively, the EES, the ETIAS, the SIS, the ECRIS-TCN and the Eurodac shall be kept in accordance with this Article and, respectively, Article 46(2) of Regulation (EU) 2017/2226, Article 69 of Regulation (EU) 2018/1240, Article 18~~ba~~ of Regulation (EU) 2018/1861, Article 18~~ba~~ of Regulation (EU) 2018/1862, Article 31a of Regulation (EU) 2019/816 and Article 28~~a~~ of Regulation (EU) 603/2013.

¹ WK 2676/2020

Article 4

Amendments to Regulation (EU) 2017/2226

New line 915a: interoperability with the VIS

(-2) in Article 8 the following paragraph is added:

- "5. From the [start of implementation of revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the EES shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008.";

New line 933a: use of the EES for examining and deciding on visas

(2da) in Article 24 the following paragraph is added:

- "5. The competent visa authorities and the authorities competent to decide on an application for a long-stay visa or residence permit shall have access to the relevant data in the EES for the purpose of manually verifying the hits resulting from the queries in the EES in accordance with Article 9c and 22b of Regulation (EC) No 767/2008 as well as examining and deciding on applications.".

New line 943a

Article 6

Amendments to Regulation (EU) 2018/1240

Regulation (EU) 2018/1240 is amended as follows:

²(1) in Article 4 the following point is added:

"(da) support the objectives of the VIS of facilitating the visa application procedure and contributing to the prevention of threats to the internal security of the Member States, by allowing queries in ETIAS, including the watchlist referred to in Article 34;"

³(2) in Article 8(2) the following point is added:

"(h) manually verifying the hits in the ETIAS watchlist triggered by the automated queries carried out by the VIS in accordance with Articles 9a and 22b of Regulation (EC) No 767/2008 and following up those hits, in accordance with Article 9cb of that Regulation.";

(3) the following article is inserted:

"Article 11b

Interoperability with the VIS

From the [start of implementation of revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the ETIAS Central System and the CIR shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008.";

⁴(4) in Article 13 the following paragraph is added:

"4b. Access by visa authorities and the authorities competent to decide on an application for a long-stay visa or residence permit to the ETIAS Central System in accordance with Article 9a and Article 22b of Regulation (EC) No 767/2008 shall be limited to verifying whether the applicant for a visa, long-stay visa or residence permit or his/her travel document corresponds to an issued, refused, revoked or annulled travel authorisation in the ETIAS Central System and the reasons of such decision.";

² Objectives of ETIAS

³ ETIAS National Units

⁴ Access to data stored in ETIAS

(5) the following article is inserted:

"CHAPTER IXa

**USE OF ETIAS BY VISA AUTHORITIES AND AUTHORITIES COMPETENT TO
DECIDE ON AN APPLICATION FOR A LONG-STAY VISA OR RESIDENCE
PERMIT**

Article 49a

***Access to data by visa authorities and authorities competent to decide on an application
for a long-stay visa or residence permit***

For the purpose of carrying out the verifications laid down in Articles 9c and 22b of Regulation (EC) No 767/2008, the competent visa authorities and authorities competent to decide on an application for a long-stay visa or residence permit shall have the right to access relevant data in the ETIAS Central System and the CIR.";

⁵(6) in Article 69 the following point is added:

"(h) the hits triggered by the automated queries carried out by the VIS in accordance with Articles 9a and 22b of Regulation (EC) No 767/2008, the data processed by the competent visa authorities and authorities competent to decide on an application for a long-stay visa or residence permit for the purpose of manually verifying the hits in accordance with Article 9c and 22b of that Regulation, and the data processed by the ETIAS National Units in accordance with Article 9cb of that Regulation.".

⁵ Keeping of logs

New line 943b: addition to Article 19 to ensure that Article 36c also applies to SIS Return (new text in bold)

Article 6a

Amendments to Regulation (EU) 2018/1860

Article 19 is replaced by the following:

"Article 19

Applicability of the provisions of Regulation (EU) 2018/1861

Insofar as not established in this Regulation, the entry, processing and updating of alerts, the provisions on responsibilities of the Member States and eu-LISA, the conditions concerning access and the review period for alerts, data processing, data protection, liability and monitoring and statistics, as laid down in Articles 6 to 19, Article 20(3) and (4), Articles 21, 23, 32, 33, 34(5), **36c** and 38 to 60 of Regulation (EU) 2018/1861, shall apply to data entered and processed in SIS in accordance with this Regulation."

New line 943c

Article 6b

Amendments to Regulation (EU) 2018/1861

Regulation (EU) 2018/1861 is amended as follows:

⁶(1) the following article is inserted:

*"Article 18~~b~~**a***

***Keeping of logs for the purpose of the interoperability with VIS in the meaning of
Article 27a of Regulation (EC) No 767/2008***

Logs of each data processing operation carried out within SIS and VIS pursuant to Article 36c shall be kept in accordance with Article 18 of this Regulation and Article 34 of Regulation (EC) No 767/2008.";

⁶ Logs for automated checks

⁷(2) the following article is inserted:

"Article 36c

Interoperability with VIS in the meaning of Article 27a of Regulation (EC) No 767/2008

From the [start of implementation of revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the Central System of SIS shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/817 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008."

Article 7

Amendments to Regulation (EU) 2019/817

Line 950: Access to the multiple-identity detector (new text in bold)

(3) in Article 26(1) point (b) is replaced by the following text:

"(b) the visa authorities **and the authorities competent to decide on an application for a long-stay visa or residence permit** referred to in Article 6(1) of Regulation (EC) No 767/2008 when creating or updating an application file in VIS in accordance with that Regulation;"

New line 951a: Access to the multiple-identity detector (new text in bold)

(3a) in Article 26(1) the following point is inserted:

"(ba) the VIS designated authorities referred to in Article 9ca [and Article 22b] of Regulation (EC) No 767/2008 when manually verifying hits triggered by automated queries from the VIS to the ECRIS-TCN in accordance with that Regulation;"

⁷ Interoperability

Line 958: manual verification of different identities and the authorities responsible (changes in bold)

(5) in Article 29(1) point (b) is replaced by the following text:

"(b) the visa authorities **and the authorities competent to decide on an application for a long-stay visa or residence permit** referred to in Article 6(1) of Regulation (EC) No 767/2008 for matches that occurred when creating or updating an application file in VIS in accordance with that Regulation, **with the exception of the cases referred to in point (ba);**";

New line 958a: manual verification of different identities and the authorities responsible (new text in bold)

(6) in Article 29(1) the following point is inserted:

"(ba) the VIS designated authorities referred to in Article 9ca [and Article 22b] of Regulation (EC) No 767/2008 **only for yellow links created between data from the VIS and the ECRIS-TCN when creating or updating an application file in VIS in accordance with that Regulation;**";

New line 958c: start of operations (new text in bold)

(7) in Article 72 a new paragraph 1a is inserted:

"1a. **Without prejudice to paragraph 1, for the purposes of the automated processing of Articles 9a and 22b of Regulation (EC) No 767/2008, the ESP shall start operations, limited to those purposes, from the [start of implementation of revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation].**"

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e), Article 82(1)(d), Article 87(2)(a), and Article 88(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- ³(1) The Visa Information System (VIS) was established by Council Decision 2004/512/EC⁴ to serve as the technology solution to exchange visa data between Member States. Regulation (EC) No 767/2008 of the European Parliament and of the Council⁵ laid down the VIS purpose, functionalities and responsibilities, as well as the conditions and procedures for the exchange of short-stay visa data between Member States to facilitate the examination of short-stay visa applications and related decisions. Regulation (EC) No 810/2009 of the European Parliament and of the Council⁶ set out the rules on the registration of biometric identifiers in the VIS. Access of law enforcement authorities of the Member States and of Europol to VIS has been established by Council Decision 2008/633/JHA⁷. The content of this Decision should be integrated into the VIS Regulation, to bring it in line with the current treaty framework.
- ⁸(2) Interoperability between EU information systems was established by Regulations (EU) 2019/817 and 2019/818 so that these EU information systems and their data supplement each other with a view to improving the management of the external borders, contributing to preventing and combating illegal 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.
- ⁹(3) The interoperability between the EU information systems allows systems to supplement each other to facilitate the correct identification of persons, contribute to fighting identity fraud, improve and harmonise data quality requirements of the respective EU information systems, facilitate the technical and operational implementation by Member States of existing and future EU information systems, strengthen and simplify the data security and data protection safeguards that govern the respective EU information systems, streamline the law enforcement access to the EES, the VIS, the ETIAS and Eurodac, and support the purposes of the EES, the VIS, the ETIAS, Eurodac, the SIS and the ECRIS-TCN.

³ Recital 1 of Commission proposal.

⁴ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa information System (VIS) (OJ L 213, 15.6.2004, p. 5).

⁵ 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).

⁶ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

⁷ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129).

⁸ Recital 12 of Commission proposal.

⁹ Recital 13 of Commission proposal.

- ¹⁰(4) The interoperability components cover the EES, the VIS, the ETIAS, Eurodac, the SIS, and the ECRIS-TCN, and Europol data to enable it to be queried simultaneously with these EU information systems and therefore it is appropriate to use these components for the purpose of carrying out the automated checks and when accessing the VIS for law enforcement purposes. The European search portal (ESP) should be used for this purpose to enable a fast, seamless, efficient, systematic and controlled access to the EU information systems, the Europol data and the Interpol databases needed to perform their tasks, in accordance with their access rights, and to support the objectives of the VIS.
- ¹¹(5) The comparison against other databases should be automated. Whenever such comparison reveals that a correspondence (a 'hit') exists with any of the personal data or combination thereof in the applications and a record, file or alert in the above information systems, or with personal data in the ETIAS watchlist, the application should be processed manually by an operator in the responsible authority. The assessment performed by the responsible authority should lead to the decision to issue or not the short-stay visa, *long-stay visa or residence permit*.
- ¹²(6) This Regulation lays down how this interoperability and the conditions for the consultation of data stored in Eurodac, SIS and ECRIS-TCN and of Europol data by the VIS automated process for the purposes of identifying hits are to be implemented. As a result, it is necessary to amend Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 in order to connect the VIS Central System to the other EU information systems and to Europol data.
- ¹³(7) The conditions under which, on the one hand, the visa authorities may consult data stored in Eurodac and, on the other hand, the VIS designated authorities may consult Europol data, certain SIS data and data stored in ECRIS-TCN for the purposes of the VIS should be safeguarded by clear and precise rules regarding the access by those authorities to those data, the type of queries and categories of data, all of which should be limited to what is strictly necessary for the performance of their duties. In the same vein, the data stored in the VIS application file should only be visible to those Member States that are operating the underlying information systems in accordance with the modalities of their participation.
- ¹⁴(8) Regulation (EU) XXXX/XXX [amending the VIS Regulation] allocates new tasks to the European Union Agency for Law Enforcement Cooperation (Europol) such as the provision of opinions following consultation requests by the VIS designated authorities and the ETIAS National Units. To implement those tasks, it is therefore necessary to amend Regulation (EU) 2016/794 of the European Parliament and of the Council¹⁵ accordingly.

¹⁰ Recital 14 of Commission proposal.

¹¹ Recital 15 of Commission proposal.

¹² Recital 4 of Commission proposal 2019/0001 on the ETIAS consequential amendments.

¹³ Recital 11 of Commission proposal 2019/0001 on the ETIAS consequential amendments.

¹⁴ Recital very similar to recital 1 of Regulation (EU) 2018/1241.

¹⁵ 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).

- (9) In order to support the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, VIS should be able to verify if correspondences exist between data in the VIS application files and the ECRIS-TCN data in the Common Identity Repository (CIR) as regards which Member States hold conviction information on third-country nationals and stateless persons for a terrorist offence or any other criminal offence listed in the annex to Regulation (EU) 2018/1240 if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years.
- (9a) A hit indicated by the ECRIS-TCN system should not of itself be taken to mean that the third-country national concerned has been convicted in the Member States that are indicated. The existence of previous convictions should only be confirmed based on information received from the criminal records of the Member States concerned.
- (10) This Regulation is without prejudice to Directive 2004/38/EC¹⁶.
- (11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation, insofar as its provisions relate to SIS as governed by Regulation (EU) 2018/1862, builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (12) Insofar as its provisions relate to SIS as governed by Regulation (EU) 2018/1862, Ireland could, in principle, take part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC¹⁷. Insofar as its provisions relate to Europol as governed by Regulation (EU) 2016/794, Ireland could, in principle, take part in the adoption and application of this Regulation, in accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol. Furthermore, insofar as its provisions relate to Eurodac and to ECRIS-TCN, in accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Since it is not possible, under these circumstances, to ensure that this Regulation is applicable in its entirety to Ireland, as required by Article 288 of the TFEU, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to its rights under Protocols No 19 and No 21.

¹⁶ OJ L 158, 30.4.2004, p. 77.

¹⁷ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

- (13) As regards Iceland and Norway, this Regulation constitutes, insofar as it relates to SIS as governed by Regulation (EU) 2018/1862, a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*¹⁸ which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC¹⁹.
- (14) As regards Switzerland, this Regulation constitutes insofar as it relates to SIS as governed by Regulation (EU) 2018/1862, a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*²⁰ which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA²¹.
- (15) As regards Liechtenstein, this Regulation constitutes insofar as it relates to SIS as governed by Regulation (EU) 2018/1862, a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*²² which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU²³.
- (16) In order to have this Regulation fit into the existing legal framework, Regulations (EU) 603/2013, 2016/794, 2019/816 and 2019/818 of the European Parliament and of the Council should be amended accordingly,

¹⁸ OJ L 176, 10.7.1999, p. 36.

¹⁹ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

²⁰ OJ L 53, 27.2.2008, p. 52.

²¹ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).

²² OJ L 160, 18.6.2011, p. 21.

²³ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 603/2013

Regulation (EU) 603/2013 is amended as follows:

- (1) a new Chapter is inserted:

"CHAPTER VIa

ACCESS BY VISA AUTHORITIES

Article 22a

Access to Eurodac by the competent visa authorities [and authorities competent to decide on an application for a long-stay visa or residence permit]

For the purpose of manually verifying hits triggered by the automated queries carried out by the VIS in accordance with Articles 9a [and 22b] of Regulation (EC) No 767/2008 and examining and deciding on visa applications in accordance with Article 21 of Regulation (EC) No 810/2009, the competent visa authorities [and authorities competent to decide on an application for a long-stay visa or residence permit] shall have access to Eurodac to consult data in a read-only format.

Article 22b

Interoperability with VIS

²⁴From the [start of implementation of the revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], Eurodac shall be connected to the European search portal established by Article 6 of Regulation (EU) 2019/818 to enable the automated processing referred to in Articles 9a [and 22b] of Regulation (EC) No 767/2008.";

²⁴ This formulation can stay if we refer to the current Eurodac Regulation (EU) 603/2013. This turn of phrase will need to be changed if we refer to the new Eurodac since it will enter into operations after the new VIS.

- (2) a new article is inserted:

"Article 28a

Keeping of records or logs for the purpose of VIS

For the consultation of Eurodac referred to in Article 22a of this Regulation, a record or log of each data processing operation carried out within Eurodac and VIS shall be kept in accordance with Article 28 of this Regulation and Article 34 of Regulation (EC) No 767/2008."

Article 2

Amendments to Regulation (EU) 2016/794

Regulation (EU) 2016/794 is amended as follows:

- ²⁵(1) in Article 4(1), a new paragraph is added:

"(q) provide an opinion following a consultation request referred to in Articles 9cb(4), 9cab(3) and 22b(xxx) of Regulation (EC) No 767/2008.";

- (2) Article 21 is amended as follows:

- ²⁶(a) the title is replaced by the following:

"Article 21

Access by Eurojust, OLAF and, only for purposes of ETIAS, by the European Border and Coast Guard Agency to information stored by Europol and, only for purposes of VIS, by the VIS designated authorities to information stored by Europol";

²⁵ Tasks

²⁶ New text is underlined

(b) the following paragraph is inserted:

"1b. Europol shall take all appropriate measures to enable the VIS designated authorities, for the purposes of Regulation (EC) No 767/2008, to have indirect access on the basis of a hit/no hit system to data provided for the purposes of point (a) of Article 18(2) of this Regulation, without prejudice to any restrictions indicated by the Member State, Union body, third country or international organisation providing the information in question, in accordance with Article 19(2) of this Regulation.

In the case of a hit, Europol shall initiate the procedure by which the information that generated the hit may be shared, in accordance with the decision of the provider of the information to Europol, and only to the extent that the data generating the hit are necessary for the performance of the VIS designated authorities' tasks related to VIS.

Paragraphs 2 to 7 of this Article shall apply accordingly."

Article 3

Amendments to Regulation (EU) 2018/1862

Regulation (EU) 2018/1862 is amended as follows:

(1) the following article is added:

"Article 18a²⁷

Keeping of logs for the purpose of the interoperability with VIS in the meaning of Article 27a of Regulation (EC) No 767/2008

Logs of each data processing operation carried out within SIS and VIS pursuant to Article 50a of this Regulation shall be kept in accordance with Article 18 of this Regulation and Article 34 of Regulation (EC) No 767/2008.";

²⁷ Article 18a is introduced by the ETIAS CA but in all likelihood this Regulation will be adopted first, hence renumbering as Article 18b in the ETIAS CA will be necessary.

²⁸(2) in Article 44(1), the following point is added:

"(g) manually verifying hits triggered by automated queries from the VIS and assessing whether the applicant for a visa, a long-stay visa or a residence permit would poses a threat to public policy or public security in accordance with Articles 9ca and 9cab or Article 22b of Regulation (EC) No 767/2008.";

(3) the following article is added:

"Article 50a²⁹

Interoperability with VIS in the meaning of Article 27a of Regulation (EC) No 767/2008

From the [start of implementation of revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], the Central System of SIS shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/818 to enable the automated processing referred to in Articles 9a and 22b of ~~that~~ Regulation (EC) No 767/2008."

Article 4

Amendments to Regulation (EU) 2019/816

Regulation 2019/816 is amended as follows:

³⁰(1) in Article 1 the following point is added:

³¹(d) the conditions under which data included in the ECRIS-TCN system may be used by the VIS designated authorities in order to support the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Regulation (EC) No 767/2008.";

²⁸ To add VIS designated authorities in the article on national competent authorities having a right to access data in SIS.

²⁹ Articles 50a and 50b are introduced by the ETIAS CA but in all likelihood this Regulation will be adopted first, hence renumbering as Articles 50b and 50c in the ETIAS CA will be necessary.

³⁰ Subject-matter

³¹ Point (d) is introduced by the ETIAS CA but in all likelihood this Regulation will be adopted first, hence renumbering as point (e) in the ETIAS CA will be necessary.

³²(2) in Article 2 a new subparagraph is added:

"This Regulation also supports the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Regulation (EC) No 767/2008.";

³³(3) in Article 3 point (6) is replaced by the following:

"(6) 'competent authorities' means the central authorities, Eurojust, Europol and the EPPO, the ETIAS Central Unit established in accordance with Article 7 of Regulation (EU) 2018/1240, and VIS designated authorities as referred to in Article 9ca of Regulation (EC) No 767/2008, which are competent to access or query ECRIS-TCN in accordance with this Regulation;"

(4) Article 5 is amended as follows:

(a) in paragraph 1, the following point is added:

³⁴“(c) a flag indicating, for the purposes of **Regulation (EC) No 767/2008 and of Regulation (EU) 2018/1240**, that the third-country national concerned has been convicted for a terrorist offence or any other criminal offence listed in the annex to Regulation (EU) 2018/1240 if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, and in those cases the code of the convicting Member State(s).”;

³² Scope (this article is also being amended in the ETIAS consequential amendments).

³³ Addition of a reference to VIS designated authorities. New additions are marked in **bold**. The changes introduced by the ETIAS consequential amendments are marked in grey. If this Regulation is adopted before the ETIAS CA, the text marked in grey should be removed.

³⁴ Provision on the flagging of terrorist and serious criminal offences which was proposed by COM in the ETIAS CA. New additions to refer to VIS are marked in **bold**. If this Regulation is adopted before the ETIAS CA, the text marked in grey should be removed.

³⁵(b) paragraph 1a is replaced by the following:

"1a. The CIR shall contain the data referred to in point (b) of paragraph 1 and the following data of point (a) of paragraph 1: surname (family name); first names (given names), date of birth, place of birth (town and country), nationality or nationalities, gender, previous names, if applicable, where available pseudonyms or aliases, where available, the type and number of the person's travel documents, as well as the name of the issuing authority. The CIR may contain the data referred to in paragraph 3 **as well as, in the cases referred to in point (c) of paragraph 1, the code of the convicting Member State(s)**. The remaining ECRIS-TCN data shall be stored in the central system.”;

³⁶(c) the following paragraph is added:

"7. Where hits are identified following the automated processing referred to in **Article 27a of Regulation (EC) No 767/2008 and in Article 11(1) of Regulation (EU) 2018/1240**, flags and the code of convicting Member State(s) as referred to in point (c) of paragraph 1 of this article shall be accessible and searchable only, respectively, by **the VIS Central System and by the ETIAS Central System** for the purpose of the verifications pursuant to Articles **7a** and **7b** of this Regulation in conjunction with **Article 9a(3a)(e) or Article 22b(xxx) of Regulation (EC) No 767/2008 and Article 20(2)(n) of Regulation (EU) 2018/1240**.

Without prejudice to the first sub-paragraph, the flags and the code of convicting Member State(s) as referred to in point (c) of paragraph 1 shall not be visible for any other authority than the central authority of the convicting Member State having created the flagged record”;

³⁵ New additions to cover the possibility of including the code of the convicting MS in the CIR in **bold**. This change was inserted in the Council mandate for the ETIAS CA. If this Regulation is adopted before the ETIAS CA, this amendment won't be necessary in the ETIAS CA.

³⁶ Provision on the fact that the flag should be silent which was inserted in the Council mandate for the ETIAS CA. New additions to refer to VIS are marked in **bold**. If this Regulation is adopted before the ETIAS CA, the text marked in **grey** should be removed.

³⁷(5) in Article 7, paragraph 7 is replaced by the following:

- "7. In the event of a hit, the central system **or the CIR** shall automatically provide the competent authority with information on the Member State(s) holding criminal record information on the third country national, along with the associated reference number(s) referred to in Article 5(1) and any corresponding identity information. Such identity information shall only be used for the purpose of verifying the identity of the third country national concerned. The result of a search in the central system may only be used:
- (a) for the purpose of making a request according to Article 6 of Framework Decision 2009/315/JHA;
 - (b) for the purpose of making a request referred to in Article 17(3) of this Regulation;
 - (c) to facilitate and assist in the correct identification of persons registered in the ECRIS-TCN system;
 - (d) to support the ETIAS objectives of identifying whether the presence of ETIAS applicants in the territory of the Member States would pose security risks; or
 - (e) to support the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Regulation (EC) No 767/2008."**

³⁷ Use of ECRIS-TCN for identifying the Member States holding criminal records information. New additions to refer to VIS are marked in **bold**. The changes introduced by the ETIAS consequential amendments are marked in grey. If this Regulation is adopted before the ETIAS CA, the text marked in grey, italics and underline should be removed.

³⁸(6) the following Article is inserted:

"Article 7a

Use of the ECRIS-TCN system for VIS verifications

1. From the [start of implementation of revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation], ECRIS-TCN shall be connected to the European search portal (ESP) established by Article 6 of Regulation (EU) 2019/818 to enable the automated processing referred to in Articles 9a and 22b of Regulation (EC) No 767/2008 to query ECRIS-TCN and compare the relevant data in the VIS with the relevant ECRIS-TCN data in the CIR, flagged pursuant to Article 5(1)(c) of this Regulation.
2. VIS designated authorities as defined in Article 9ca of Regulation (EC) No 767/2008, shall have, for the purpose of performing the tasks pursuant to that Regulation, the right to access ECRIS-TCN data in the CIR. However, they shall only have access to data records to which a flag has been added in accordance with Article 5(1)(c) of this Regulation.";

³⁹(7) in Article 8, paragraph 2 is replaced by the following:

- “2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall erase the data record, including any fingerprint data, facial images or flags as referred to in Article 5(1)(c), from the central system and the CIR. In those cases where the data related to a conviction for a terrorist offence or any other criminal offence as referred to in Article 5(1)(c) are deleted from the national criminal record, but information on other convictions of the same person is retained, only the flag referred to in Article 5(1)(c) shall be removed from the data record. The erasure shall be done automatically, where possible, and in any event no later than one month after the expiry of the retention period.”;

³⁸ Addition of new article on interoperability and giving access to the VIS designated authority. The ETIAS CA also introduce an Article 7a. If this Regulation is adopted before the ETIAS CA, the renumbering to Article 7b will be necessary in the ETIAS CA.

³⁹ Rules on erasure of data and flagging upon expiry of the retention period. The ETIAS CA introduce this paragraph. If this Regulation is adopted before the ETIAS CA, this paragraph should be removed from the ETIAS CA.

⁴⁰(8) in Article 24, paragraph 1 is replaced by the following:

"1. The data entered into the central system and the CIR shall only be processed for the purposes of the identification of the Member State(s) holding the criminal records information of third country nationals, *or to facilitate and assist in the correct identification of persons registered in the ECRIS-TCN system, or to support the ETIAS objectives of identifying whether the presence of ETIAS applicants in the territory of the Member States would pose security risks, or to support the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security in accordance with Regulation (EC) No 767/2008.* ";

⁴¹(9) the following Article is inserted:

"Article 31a

Keeping of logs for the purpose of VIS

For the consultations listed in Article 7a of this Regulation, a log of each ECRIS-TCN data processing operation carried out within the CIR and VIS shall be kept in accordance with Article 34 of Regulation (EC) No 767/2008."

⁴⁰ Purpose of the processing of personal data. New additions to refer to VIS are marked in **bold**. The changes introduced by the ETIAS consequential amendments are marked in grey. If this Regulation is adopted before the ETIAS CA, the text marked in *grey, italics and underline* should be removed.

⁴¹ Addition of new article for logs for purposes of VIS automated checks. The ETIAS CA also introduce an Article 29a. If this Regulation is adopted before the ETIAS CA, the renumbering to Article 29b will be necessary in the ETIAS CA.

Article 5

Amendments to Regulation (EU) 2019/818

Regulation 2019/818 is amended as follows:

⁴²(1) In Article 18, the following paragraph is inserted:

"1a. For the purpose of **Articles 9a and 22b of Regulation (EC) No 767/2008** and Article 20 of Regulation (EU) 2018/1240, the CIR shall also store, logically separated from the data of paragraph 1, the data referred to in Article 5(1)(c) of Regulation (EU) 2019/816. The data referred to in Article 5(1)(c) shall only be accessible as referred to in Article 5(7) of Regulation (EU) 2019/816".

⁴³(2) In Article 68, a new paragraph is inserted:

"1a. Without prejudice to paragraph 1, for the purposes of the automated processing of Articles 9a and 22b of Regulation (EC) No 767/2008, the ESP shall start operations, limited to those purposes, from the [start of implementation of revised VIS], as provided for in Article 9 of Regulation XXX/XXX [amending the VIS Regulation]."

⁴² Logical separation of flags for serious crime/terrorism from the other data in the CIR. New additions to refer to VIS are marked in **bold**. If this Regulation is adopted before the ETIAS CA, the text marked in grey should be removed.
add a reference to VIS in Article 18(1a) on the logical separation of flags for serious crime/terrorism from the other data in the CIR (this provision is added by CONS in the ETIAS consequential amendments; if it remains in the text and makes reference to the ETIAS Regulation (as per CONS position), a reference to the VIS Regulation should be added).

⁴³ Start of operations.

Article 6

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from the date referred to in Article 9(2) of Regulation XXX/XXX [amending the VIS Regulation].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Brussels, 17 June 2020

Mr Paulo Rangel

Rapporteur on VIS, European Parliament Committee on LIBE

Mr Juan Fernando Lopez Aguilar

Chairman, European Parliament Committee on LIBE

BRUSSELS

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2017/2226, Regulation (EU) 2016/399, Regulation XX/2018 [Interoperability Regulation], and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA (2018/0152 (COD))
- Information on the splitting of the proposal into two texts

Dear Mr Rangel / Mr Lopez Aguilar,

In relation to this file, I would like to inform you that when the Council adopted its revised mandate on 17 June 2020, it decided, for legal reasons, to split the proposal into two texts.

This is because Regulation (EC) No 767/2008, Regulation (EC) No 810/2009, Regulation (EU) 2016/399, Regulation (EU) 2017/2226, Regulation (EU) 2019/817, Regulation (EU) 2018/1240, Regulation (EU) 2018/1860, Regulation (EU) 2018/1861, Regulation (EU) 2018/1862 and Decision 2004/512/EC, which are Schengen related, need to be amended, as well as Regulations (EU) 603/2013, 2016/794 and 2019/816 (which are non-Schengen related). Regulation (EU) 2019/818 establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration also needs to be amended. Given the differentiated geometry concerning the modified regulations, it is legally appropriate to split the proposal into two texts in order to respect the coherence of the Schengen *acquis* and to allow a differentiated participation and vote in the Council, in accordance with the relevant Protocols (19, 21 and 22) annexed to the TEU and to the TFEU.

For your ease, I attach the text of the revised Council mandate which includes the two texts, i.e some amendments to be included in the draft Regulation amending VIS and other amendments to be included in a separate draft Regulation amending Regulations (EU) 603/2013, 2016/794, 2018/1862, 2019/816 and 2019/818 as agreed by Coreper on 17 June 2020.

This splitting does not affect in any way the substance of the consequential amendments to the above-mentioned Regulations as a result of the amended VIS Regulation. It will simply result in a need for two COD numbers.

Yours sincerely,

Irena ANDRASSY
Chair of the Permanent Representatives Committee
(Part 2)

copy to:
Monique Pariat, Director-General,
DG Migration and Home Affairs, European Commission
