



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	Presidency
to :	Working Party on Frontiers / Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject :	Draft Regulation of the European Parliament and of the Council of [...] amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code

At the last meeting of the Working Party on Frontiers /Mixed Committee on 11 April 2008, the above proposal for a Regulation amending the Schengen Borders, as regards the use of the Visa Information System (VIS), was discussed.

Following the outcome of the discussion, the Presidency proposes a new draft of the proposal, as set out in the Annex to this note, to be discussed at next meeting of the Working Party on 6 May 2008.

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of [...] amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular

Article 62(2)(a) thereof,

Having regard to the proposal from the Commission¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)² lays down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance at the border, including checks in the Schengen Information System.
- (2) Regulation (EC) No xx/2008 [of the European Parliament and the Council of (date) on the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas (VIS Regulation)]³ aims at improving the implementation of the common visa policy. It also provides that the purposes of the VIS include facilitating both checks at external border crossing points and the fight against fraud.
- (3) Regulation (EC) No xx/2008 [VIS Regulation] lays down search criteria and conditions for the access of competent authorities, for the purpose of carrying out checks at external border crossing points, to data for verifying the identity of visa holders, the authenticity of the visa and whether the entry conditions are fulfilled, and for identifying any person who may not fulfil, or who no longer fulfils, the conditions for entry, stay or residence on the territory of the Member States.
- (4) Since only a **verification of fingerprints** can confirm with certainty that a person wishing to enter the Schengen area is the person to whom the visa has been issued, provision should be made for the use of the VIS at external borders.
- (5) In order to verify whether the entry conditions laid down in Article 5 of Regulation (EC) No 562/2006 are fulfilled and to manage their tasks successfully, border guards should use all necessary information available, including data which may be consulted in the VIS. **In cases where consultation in the VIS is performed, it should be done in accordance with Article 18 of Regulation (EC) No xx/2008.**

¹ COM(2008) 101 final 2008/0041 (COD)

² OJ L 105, 13.4.2006, p. 1.

³ OJ [...], [...], p. [...].

- (6) In order to prevent circumvention of border crossing points where the VIS may be used and to guarantee its full effectiveness, there is a particular need to use the VIS in a harmonised way when entry checks are carried out at the external borders.
- (6a) Provision should be made for carrying out checks on a random basis in the VIS at external borders in certain cases in order to avoid excessive waiting time at the borders caused by border checks.**
- (7) Since, in cases of repeated visa applications within a time-frame of [48] months, it is appropriate for biometric data to be re-used and copied from the first visa application in the VIS, use of the VIS for entry checks at the external borders should be compulsory.
- (8) Regulation (EC) No 562/2006 should therefore be amended accordingly.
- (9) Since the objectives of the proposed action, namely the establishment of the rules applicable on the use of the VIS at the external borders, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (10) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as in the Charter of Fundamental Rights of the European Union.
- (11) As regards Iceland and Norway, this Regulation constitutes 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*¹, which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC² on certain arrangements for the application of that Agreement.
- (12) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*³, which fall within the area referred to in Article 1, point [A], of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC.⁴**

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 176, 10.7.1999, p. 31.

³ OJ L 53 of 27.2.08, p. 52.

⁴ OJ L 53 of 27.2.08, p. 1.

- (12a) **As regards Liechtenstein, this Directive constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed 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*¹, which fall within the area referred to in Article 1, point [A], of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC.**²
- (13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, 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 builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.
- (14) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*³. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with 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*⁴. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (16) As regards Cyprus, this Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (17) This Regulation constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning Article 4(2) of the 2005 Act of Accession.

¹ The text of this instrument is available on <http://www.consilium.europa.eu/docCenter.asp?lang=en&cmsid=245> under the reference Doc. 16462/06.

² OJ L 83, 26.3.08, p.3"

³ OJ L 131, 1.6.2000, p. 43.

⁴ OJ L 64, 7.3.2002, p. 20.

HAVE ADOPTED THIS REGULATION:

Article 1
Amendment

In Regulation (EC) No 562/2006, Article 7(3) is amended as follows:

(1) the following point (aa) is inserted:

“(aa) if the third country national holds a visa referred to in Article 5(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa and of the authenticity of the visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No xx/2008 of the European Parliament and of the Council;

By way of derogation, where traffic of such intensity arises that the waiting time at the border crossing point becomes excessive and all resources have been exhausted as regards staff, facilities and organisation and where, on the basis of an assessment of the risk related to internal security and illegal immigration, it is established that the consultation in the Visa Information System need not be systematic, such consultation may be carried out on a random basis for as long as these conditions are met. Consultation of the Visa Information System (VIS) shall, in all cases, be carried out in accordance with Article 18 of Regulation (EC) No xx/2008.

(2) the following sentence is added at the end of point (c)(i):

“such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No xx/2008;”

(3) the following point (d) is added:

“(d) for the purpose of identification of any person who may not fulfil, or who may no longer fulfil, the conditions for entry, stay or residence on the territory of the Member States the VIS may be consulted in accordance with Article 20 of Regulation (EC) No xx/2008.”

Article 2
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*.

It shall apply from [DD/MM/YY – to be the twentieth day following the date referred to in Article 48(1) of Regulation (EC) No xx/2008].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]
