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from : Presidency
to : Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee
 (EU-Iceland/Liechtenstein/Norway and Switzerland)

No. prev. doc.: 8674/08 FRONT 40 VISA 150 COMIX 328

No. Cion prop. 6970/08 FRONT 28 VISA 72 CODEC 300 COMIX 165 (COM(2008) 101 final)

Subject: **Draft Regulation of the European Parliament and of the Council amending
Regulation (EC) No 562/2006 as regards the use of the Visa Information
System (VIS) under the Schengen Borders Code**

1. INTRODUCTION

a. The proposal

On 26 February 2008, the Commission submitted a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code.

The proposal aims at supplementing the (draft) VIS Regulation by laying down common rules on the consultation of the VIS by border guards at external borders. Consultation would be compulsory for verification purposes at entry and optional for verification during exit checks and for identification during entry and exit checks.

Regarding the provisions on entry checks for verification in Article 1(1) of the proposal, Article 18 of the (draft) VIS Regulation provides that search in the VIS is carried out using the visa sticker in combination with verification of finger prints of the visa holder. For a maximum period of three years after the VIS has started operations, it would, however, be possible for border guards to perform verification using only the visa sticker number. As from one year after the start of operations, the period of three years may be reduced as regards air borders by a Comitology decision.

b. Discussions on the proposal

The proposal has been discussed by the Working Party on Frontiers/Mixed Committee at several occasions. At its meeting on 11 April 2008, delegations expressed divergent views concerning the systematic nature and the types of checks to be carried out by the border authorities with regard to consultation of the VIS.

Some delegations expressed concerns in respect of the possible difficulties that could arise at the external land borders when carrying out consultations of the VIS, such as technical problems and long waiting times. These delegations would be in favour of non-systematic consultation and/or of exceptions to the obligation for border guards to consult the VIS using both the number of the visa sticker and the fingerprints.

Other delegations, emphasising the security aspects of the systematic consultation of the VIS, were not in favour of any new exceptions to the obligation for border guards to check systematically the biometric data stored in the system.

At the meeting of the Working Party on Frontiers/Mixed Committee on 6 May 2008, the Presidency presented the compromise text set out in the Annex to 8674/08 FRONT 40 VISA 150 COMIX 328. The compromise text was in general met with positive reactions, but some questions remained open. The Commission, though not being in favour of derogations to the principle of the systematic consultation of the VIS, would reflect further on the possibility of introducing a reporting obligation.

2. QUESTIONS SUBMITTED TO SCIFA

The Presidency presented the state of play regarding proceedings in the Council at the LIBE Committee meeting on 6 May 2008. On the same occasion the rapporteur presented the draft report on the proposed regulation. Several Members of the European Parliament have tabled additional amendments. The LIBE Committee intends to vote on the draft report on 28 May 2008. The Presidency has summarized the amendments tabled by individual MPs of the LIBE Committee in the form of options set out in Annex II.

With a view to starting negotiations and possibly reaching agreement with the European Parliament at first reading, the Presidency proposes that work should continue to be based on the approach of a systematic consultation of the VIS using both criteria (visa sticker number and fingerprints), subject to a possibility to consult the VIS on a random basis in certain limited cases.

The Presidency text discussed by the Working Party on Frontiers/Mixed Committee on 6 May 2008 was based on that approach. In the light of comments made by delegations, the Presidency has for the purpose of further proceedings established the amended version of the Presidency text set out in Annex I.

The Presidency text provides that in cases where traffic of such intensity arises that the waiting time at the border crossing points becomes excessive, all resources have been exhausted and, on the basis of an assessment, there is no risk to internal security or illegal immigration, it is possible for border guards to carry out random consultations instead of systematic consultations of the VIS for a limited period of time. This decision should be taken by the border guard in command at the border crossing point concerned.

The text only gives limited possibilities for Member States to deviate from systematic consultations. In addition, it provides for an obligation for Member States to immediately inform the other Member States and the Commission each time they apply such measures for a period of more than 6 hours, and to report once a year to the Commission on the application of such measures.

This approach is supported by one of the amendment proposed by the European Parliament.

The Strategic Committee on Immigration, Frontiers and Asylum/ Mixed Committee is invited to agree that work should continue on the basis of the approach of the Presidency as outlined above with a view to reaching a first reading agreement with the European Parliament on the proposal for a Regulation.

Article I
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. **The decision to carry out consultation in the VIS on a random basis shall be taken by the border guard in command at the border crossing point.***

Where a Member State carries out consultation in the VIS on a random basis for a period of more than 6 hours it shall immediately inform the other Member States and the Commission.

Member States shall transmit once a year a report on the application of second subparagraph to the Commission. The report shall include the names of the authorised crossing-points and the date and duration of the introduction of the measure.

The Presidency has summarized the amendments the LIBE Committee in the form of the following options:

a. Possibility to consult VIS on non-systematic basis.

The approach is that the general rule of systematic consultation in the VIS is applied, subject to the exception that the border guard in command has the possibility to decide, based on his/her knowledge and experience, to consult the VIS on a non-systematic basis.

b. Systematic consultation in the VIS using only the number of the visa sticker + in cases of doubt both criteria.

The general rule should be systematic consultation in the VIS, but, by way of derogation from Article 18 of the VIS Regulation, by using only the number of the visa sticker. This option includes the possibility to carry out the verification in the VIS using both criteria (visa sticker number and fingerprints) only in cases of doubts as to the identity of the holder of the visa and/or the authenticity of the visa, or when the search with the visa sticker failed.

c. Systematic consultation in the VIS using both criteria + possibility to consult the VIS only with visa sticker number in certain cases:

The general rule should be the systematic consultation in the VIS using both criteria as set out in Article 18 of the VIS Regulation. In certain cases (excessive waiting time), under the condition that there is no risk regarding internal security and illegal immigration, and for a limited period of time only, it would be possible for the border guard in command to decide to consult the VIS only with visa sticker number.
