

Opinion of the European Economic and Social Committee on ‘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 (EU) 2018/... (Interoperability Regulation) and Decision 2004/512/EC and repealing Council Decision 2008/633/JHA’

(COM(2018) 302 final)

(2018/C 440/26)

Rapporteur-general: **Ionuț SIBIAN**

Referral	European Parliament, 02.07.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Bureau decision	10.07.2018
Adopted at plenary	19.09.2018
Plenary session No	537
Outcome of vote (for/against/abstentions)	97/3/0

1. Conclusions and recommendations

1.1. The European Economic and Social Committee supports a visa policy that is and should remain a tool to facilitate tourism and business, while preventing security risks and the risk of irregular migration to the EU.

1.2. The EESC supports the further development of the Visa Information System (VIS) as the best technological solution facilitating the short-stay visa procedure and helping visa, border, asylum and migration authorities to rapidly and effectively check the necessary information on third-country nationals who need a visa to travel to the EU.

1.3. The EESC considers that one key objective of action in this field should be the harmonisation of EU Member State procedures, practices and outcomes with regard to visa policy.

1.4. As regards devising specific risk indicators for visa processing, the EESC considers that this is liable to limit applicants' rights. The EESC urges the EU institutions and Member State authorities to properly inform and train frontline and management staff to avoid possible profiling based on race, gender, ethnicity, religion, sexual orientation and any other personal characteristics.

1.5. The EESC supports the objective of making it easier to identify missing persons. However, lowering the fingerprinting age for child applicants from 12 years to 6 years can be problematic. The proposal did not include input and opinions from child protection agencies and organisations, preventing the EESC from fully assessing the impact of the proposal on children and their protection.

1.6. In relation to this same objective, while storing a copy of the bio-page of the applicant's travel document in the VIS is acceptable and necessary, building this new data tool to support return procedures, as stated in the proposal, is questionable. The EESC does not consider that the proposed changes would necessarily lead to the return of third-country nationals. Instead, it should be a tool which encourages the Member States to act with due regard for both the legality of stay and the interest and wellbeing of the individuals concerned. The third-country nationals should be encouraged and assisted by the authorities to regularise their stay and consider returning to their place of origin.

1.7. As regards the ancillary objective of this proposal — to allow, under strict conditions, national law enforcement authorities and Europol to access VIS data for law enforcement purposes — the EESC stresses the importance of strict access conditions. Access should ideally require court decisions which would ensure that such access is a necessary limitation of the protection of personal data principle.

1.8. The EESC praises the scope of the consultations organised in relation to this proposal. At the same time, the Committee, other institutions and the general public would have greatly benefitted if more input and insights from the parties consulted had been included in the proposal. It is not clear what kind of input was offered and how far it influenced the final form of the proposal.

1.9. As regards protection of fundamental rights, the EESC welcomes the European Commission's focus on this point. The Committee recommends that further attention be given to the way Member States use visa applicants' personal data. As stated earlier, further safeguards are needed against practices which result in discrimination against third-country nationals applying for short or long stay and residence.

1.10. The proposal would have benefitted from more detailed and specific data on the short- and long-stay visas and residence permits, country by country, of both EU Member States and third countries. More information on overstays would also have been very useful when it comes to child trafficking. The data are indispensable for assessing the nature and structure of mobility and the appropriateness of the instruments used.

1.11. The EESC also recommends a more solid commitment to work with the governments and civil society of the third countries in order to inform, prepare and assist their nationals throughout the visa application procedure.

2. General comments

2.1. The EESC supports a visa policy that is and should remain a tool to facilitate tourism and business, while preventing security risks and the risk of irregular migration to the EU.

2.2. While acknowledging the migration and security challenges of recent years, the EESC encourages the Member States and the EU institutions to take a consensual, balanced and proportionate approach with the aim of keeping the EU as open, responsible, engaging and innovative as possible.

2.3. The EESC supports the further development of the Visa Information System (VIS) as the best technological solution facilitating the short-stay visa procedure and helping visa, border, asylum and migration authorities to rapidly and effectively check the necessary information on third-country nationals who need a visa to travel to the EU.

2.4. The EESC supports the overall objectives of this initiative: improving security within the EU and at its borders, facilitating the right of legitimate travellers to cross the external border and freely move and stay within the area without internal border controls, and facilitating the management of the Schengen area's external borders.

2.5. The EESC supports the specific objectives of this initiative — facilitating the visa application procedure; facilitating and strengthening checks at external border crossing points and within the territory of the Member States; and enhancing the internal security of the Schengen area by facilitating the exchange of information among Member States on third-country nationals holding long-stay visas and residence permits.

2.6. The EESC also supports the closing of the remaining information gaps for borders and security: long-stay visas and residence documents to be included in the VIS.

2.7. As regards enhancing checks on visa processing by means of interoperability, the verification and assessment of the information submitted by applicants and the VIS automatic query for each application against each of the available systems, the EESC sees this as a welcome procedural and technological development.

2.8. As regards devising specific risk indicators for visa processing, the EESC considers that this is liable to limit applicants' rights. Although the risk indicators would not contain any personal data, they would be based on statistics and information provided by Member States on threats, abnormal rates of refusal or overstay by certain categories of third-country nationals, and public health risks. There is a significant risk that these data and indicators will be used by the visa processing authorities to reject visa applications based on the profiles built into the system and not the individual circumstances of the applicant. The EESC urges the EU institutions and Member State authorities to properly inform and train frontline and management staff as to avoid possible profiling based on race, gender, ethnicity, religion, sexual orientation and any other personal characteristics.

2.9. The EESC supports the objective of making it easier to identify missing persons. However, lowering the fingerprinting age for child applicants from 12 years to 6 years can be problematic. The proposal did not include input and opinions from child protection agencies and organisations, preventing the EESC from fully assessing the impact of the proposal on children and their protection.

2.10. In relation to this same objective, while storing a copy of the bio-page of the applicant's travel document in the VIS is acceptable and necessary, building this new data tool to support return procedures, as stated in the proposal, is questionable. The EESC does not consider that the proposed changes would necessarily lead to the return of third-country nationals. Instead, it should be a tool which encourages the Member States to act with due regard for both the legality of stay and the interest and wellbeing of the individuals concerned. The third-country nationals should be encouraged and assisted by the authorities to regularise their stay and consider returning to their place of origin.

2.11. As regards the ancillary objective of this proposal — to allow, under strict conditions, national law enforcement authorities and Europol to access VIS data for law enforcement purposes — the EESC stresses the importance of strict access conditions. Access should ideally require court decisions which would ensure that such access is a necessary limitation of the protection of personal data principle.

2.12. The EESC welcomes the efforts of the Commission to commission three independent studies: one on the feasibility, necessity and proportionality of lowering the fingerprinting age for children in the visa procedure and on storing a copy of the travel document of visa applicants in the VIS, and two studies on the feasibility and on the necessity and proportionality of extending the VIS to include data on long-stay visas and residence documents.

2.13. The EESC praises the scope of these consultations, involving all stakeholders, including national authorities that have access to enter, amend, delete or consult data in the VIS, national authorities responsible for migration, return, child protection authorities, police and anti-trafficking authorities, authorities responsible for consular affairs, and national authorities responsible for checks at external border crossing points. Various non-EU authorities and non-governmental organisations involved in children's rights were also consulted. At the same time, the Committee, other institutions and the general public would have greatly benefitted if more input and insights from the parties consulted had been included in the proposal. It is not clear what kind of input was offered and how far it influenced the final form of the proposal.

2.14. As regards protection of fundamental rights, the EESC welcomes the European Commission's focus on this point. The Committee welcomes the additional safeguards introduced by this proposal to cover the specific needs of the new categories of data, data processing and data subjects that will be covered by the VIS, as part of the broader effort to protect individuals' rights of access, correction, deletion and redress of personal data. The Committee recommends that further attention be given to the way Member States use visa applicants' personal data. As stated earlier, further safeguards are needed against practices which result in discrimination against third-country nationals applying for short or long stay and residence.

2.15. The proposal would have benefitted from more detailed and specific data on the short- and long-stay visas and residence permits, country by country, of both EU Member States and third countries. More information on overstays would also have been very useful when it comes to child trafficking. The data are indispensable for assessing the nature and structure of mobility and the appropriateness of the instruments used.

2.16. The EESC also recommends a more solid commitment to work with the governments and civil society of the third countries in order to inform, prepare and assist their nationals in the visa application procedure.

Brussels, 19 September 2018.

The President
of the European Economic and Social Committee
Luca JAHIER
