



EUROPEAN COMMISSION

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**REGULATORY SCRUTINY BOARD OPINION**

**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**

{COM(2018) 302}  
{SWD(2018) 195}  
{SWD(2018) 196}



Brussels,  
Ares(2018)

## **Opinion**

### **Title: Impact Assessment / Visa Information System**

(version of 13 April 2018)\*

### **Overall 2<sup>nd</sup> opinion: POSITIVE**

#### **(A) Context**

The Visa Information System (VIS) allows Schengen States to exchange visa data. It connects consulates in non-EU countries and all external border-crossing points of Schengen States. Dating from 2004, VIS gradually rolled out in all Member States' consulates around the world between October 2011 and February 2016. It now contains data on more than 52 million visa applications, including facial images and fingerprints. The EU Agency for large-scale IT systems, eu-LISA, manages VIS. The plan is to make VIS interoperable with the other databases on migration and border management.

Recent developments have prompted calls to amend the common visa policy. This impact assessment considers options to extend VIS to long-stay visas. It also considers adding elements to better prevent trafficking of children and to facilitate return of third country nationals. It aims to capture benefits of visa and visa-free travel while improving migration, security and border management.

#### **(B) Main considerations**

**The Board notes that the revised impact assessment now better links problems and possible options. It now also contains a more nuanced and transparent assessment of social impacts and fundamental rights.**

**The Board gives a positive opinion, with a recommendation to further improve the report with respect to the following key aspects:**

**The evidence still does not sufficiently support limiting fingerprinting of children to ages 6 and above.**

#### **(C) Further considerations and recommendations for improvement**

(1) The report should better explain how the numerous additions of information and data sharing in this VIS proposal are compatible with the objective of simplifying the recent Visa code proposal. This would further clarify the purpose and scope of the VIS

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

amendments and their impact on free movement across Schengen States.

(2) The report should clarify the practical feasibility of available solutions. The report presents the problem as being a consequence of differences in Member States' procedures on document handling. The report could better explain how the options affect these differences and what it will mean in practice for Member States to change administrative procedures.

(3) The report now includes more arguments for the preferred option of lowering the fingerprinting age to 6. The main reference remains the 2013 JRC study. This offered technological avenues and did not categorically exclude the under 6 age group. However, the report should support some of the arguments with stronger evidence (i.e. relatively lower number of children, lower reliability of fingerprints) why children below 6 should not be covered. It should also justify that by including fingerprinting for children below 6, the overall effectiveness of the measure for all children from 0 to 12 years is lower than for children between 6 and 12 years alone. This would imply that including children younger than 6 would actually harm the overall performance.

The Board takes note of the quantification of the various costs and benefits associated with the preferred options of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

*Some more technical comments have been transmitted directly to the author DG.*

#### **(D) RSB scrutiny process**

**The lead DG shall ensure that the recommendations of the Board are taken into account in the report prior to launching the interservice consultation.**

**The attached quantification tables may need to be further adjusted to reflect any changes in the choice or the design of the preferred options in the final version of the report.**

Full title	Proposal for a regulation of the European Parliament and the Council of amending Regulation (EC) no 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS regulation) and Regulation 810/2009 establishing a Community Code on Visas (Visa Code).
Reference number	2017/HOME/208
Date of RSB meeting	Written procedure

**ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 13 April 2018**

*(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)*

<i>I.a Overview of Direct Benefits – Preferred options</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Savings in administrative costs (Migration and return authorities)	€ 3,2 m – € 12,7 m	Migration and return authorities will not be required to contact the consulates when obtaining copies of travel documents.
Savings in administrative costs (Consulates)	€ 0,7 m – € 2,8 m	Consulates will benefit from the reduced number of supporting document assistance requests from migration and return authorities. (€ 366 – € 1,462 per consulate)
Combatting identity theft	Not quantifiable due to the scarcity of data	Administration will be provided with an effective tool to verify identity of children.
Reduction of child trafficking	Not quantifiable due to the scarcity of data	The proposed measure will have a restrictive impact on traffickers coercing children to travel on a visa not theirs.
Protection of children	Not quantifiable due to the scarcity of data	Authorities dealing with trafficked/missing children will be able to identify/verify TCN unaccompanied children more effectively.
Improvement of the border management	Not quantifiable due to the scarcity of data	Border management and law enforcement authorities will benefit from facilitated document checks.
Reduced workload related to security screening	Not quantifiable due to the scarcity of data	Consulates and migration authorities will primarily benefit from the automatic checks against other databases.

<i>I.b Overview of Indirect Benefits – Preferred options</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
Reduced delays in return procedures	€ 46,3 m – € 92,6 m	Reduced delays in return procedure will help to decrease cost related to pre-removal detention centres, subsistence and other relevant costs.
Executing a higher proportion of return decisions	€ 6,7 m – € 32,1 m	The proposed measures will provide a reliable means to systematically present evidence of a TCN visa overstayers'

		nationality, thus facilitating the execution of return decisions.
Family (re)unification	Not quantifiable in principle	A record stored in the VIS might help to reunite children who are found unaccompanied in the Schengen area with parents, family or care givers.
Verifying the parental/ guardian relationship	Not quantifiable in principle	Fingerprints of children in the VIS would allow for verifying the claimed relationship between a child and adults presenting themselves as parents or guardians.
Facilitating Dublin and asylum examination	Not quantifiable due to the scarcity of data	Taking fingerprints of children might facilitate the application of the Dublin Regulation, which determines the Member State responsible for processing an asylum claim.
Right to move and reside within the EU	Not quantifiable in principle	Third country nationals will benefit from smooth and quicker border checks.
Facilitated visa application procedure	Not quantifiable due to the scarcity of data	Visa applicants and consulates will benefit from more efficient security screening and thus faster procedure.
Higher security	Not quantifiable in principle	Societies at large will benefit from higher security resulting from more effective protection of external borders.

The quantitative analysis was conducted separately for each policy area. The bellow presented overview of costs does not therefore take into account considerable cost reduction aspects, such as economies of scale and potential investment overlaps, which would finally result from implementing the combination of preferred policy options.

<i>II. Overview of costs – Preferred option (thousands EUR)</i>							
Preferred options		Citizens/Consumers		Businesses (ESPs)		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
1.1.A	Direct costs	-	-	6,708	5,250	3,325 – 4,000	375 – 560
	Indirect costs	-	-	-	-	-	-
2.1	Direct costs	-	-	-	44.6 – 223	147.4	7.6 – 38
	Indirect costs	-	-	-	-	-	-
3.4.B	Direct costs	-	-	-	-	10,100 – 12,120	2,400 – 3,600
	Indirect costs	-	-	-	-	-	-
4.2	Direct costs	-	-	-	-	10,000	3,000
	Indirect costs	-	-	-	-	-	-



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2017)

## **Opinion**

### **Title: Impact Assessment on the Visa Information System (VIS)**

(version of 19 March 2018)\*

### **Overall opinion: NEGATIVE**

#### **(A) Context**

The Visa Information System (VIS) allows Schengen States to exchange visa data. It connects consulates in non-EU countries and all external border-crossing points of Schengen States. Dating from 2004, VIS gradually rolled out in all Member States' consulates around the world between October 2011 and February 2016. It now contains data on more than 52 million visa applications, including facial images and fingerprints. The EU Agency for large-scale IT systems, eu-LISA, manages VIS. The plan is to make VIS interoperable with the other databases on migration and border management.

Recent developments have prompted calls to amend the common visa policy. This impact assessment considers options to extend VIS to long-stay visas. It also considers adding elements to better prevent trafficking of children and to facilitate return of third country nationals. It aims to capture benefits of visa and visa-free travel while improving migration, security and border management.

#### **(B) Main considerations**

**The Board gives a negative opinion, because the report contains important shortcomings that need to be addressed particularly with respect to the following key aspects:**

- (1) The problematic issues identified for long-stay visas, children's fingerprints and migration and security checks do not fully substantiate the choice of the options.**
- (2) The baseline does not present the existing framework for the respect of data protection rules and for protection of other fundamental rights. The incremental effect of each of the options is therefore not sufficiently clear. Additional safeguards are not developed.**
- (3) The scoring of the options is not fully coherent and does not unequivocally lead to the preferred option. This is particularly the case for the options on fingerprinting of minors and on migration and security checks.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

### **(C) Further considerations and adjustment requirements**

(1) The report needs to elaborate the policy context of the VIS proposal. It should clarify the link with the recent Visa Code proposal, with the pending harmonisation of the residence card/permit, with the interoperability initiative and with the overall agenda on regular and irregular migration including the return policy.

(2) The problem definition identifies four key issues (i.e. difficulties to return third country nationals; serious crimes and visa fraud; verification of long-term visas; information gaps leading to security risks). The last three result in a call for an extension of VIS to include: 1) fingerprints of younger children to fight trafficking; 2) data on long-stay visas in addition to the currently covered short-stay visas; 3) possibilities for migration and security checks. The problem description should better explain how the current absence of these three issues in VIS contributes to the problems.

(3) A more specific problem description would allow a better understanding of the content and proportionality of the presented options. The report should more precisely describe the link between trafficking and third country nationals and clarify whether the initiative addresses other types of abuse as well. On long-term visas, it should explain why the option is to extend VIS to all visa applications, while the problem definition highlights issues with visas and residence documents. The report needs to describe in more detail how and to what extent the options on migration and security checks build on existing interoperability and consultation rights and what new elements they introduce. It also needs to clarify the legal and practical feasibility of each option.

(4) The baseline should explain the general considerations and existing safeguards in VIS for data protection (e.g. General Data Protection Regulation, inspections by European Data Protection Supervisor) and other fundamental rights. The additional safeguards required by the amendments proposed to the VIS Regulation need to be systematically listed and better explained for each of the options, taking the revised baseline as point of reference. The proposed migration and automated cross-checks and screening rules will affect a range of fundamental rights such as the right to liberty and security and the right to an effective remedy. The report should better clarify the situation of third country nationals that are family members of EU citizens in comparison to other third country nationals.

(5) The report should refine and better substantiate how it scores the options. In particular, it needs to clarify the scoring on effectiveness and efficiency of the options on fingerprinting for minors. It should also better explain how these scores lead to the choice of preferred option, in particular for migration checks where the negative impacts on fundamental rights seem to exclude the preferred option of automated cross-checks and screening rules.

(6) Stakeholder views of the functioning of the VIS and of the various options need to feature throughout the report. This includes any critical views and concerns.

*Some more technical comments have been transmitted directly to the author DG.*

**(D) RSB scrutiny process**

**The lead DG shall ensure that the report is revised in accordance with the above-mentioned requirements and resubmitted to the Board for its final opinion.**

Full title	Proposal for a regulation of the European Parliament and the Council of amending Regulation (EC) no 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS regulation) and Regulation 810/2009 establishing a Community Code on Visas (Visa Code).
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