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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the implementation of Regulation (EC) No 767/2008 of the European Parliament and  
of the Council establishing the Visa Information System (VIS), the use of fingerprints at  
external borders and the use of biometrics in the visa application procedure/REFIT  
Evaluation**

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# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## on the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT Evaluation

### 1. INTRODUCTION

#### 1.1. The VIS and its role in facilitating the exchange of data between Member States

When progressively establishing an area of freedom, security and justice, the European Union must ensure the free movement of persons and a high level of security. In this context, priority was given to developing and establishing the Visa Information System (VIS) to exchange visa data between Member States<sup>1</sup>.

A comprehensive legal framework was adopted to establish the VIS:

- **Council Decision 2004/512/EC** of 8 June 2004 established the VIS as a system for exchanging visa data between Member States;
- **Regulation (EC) No 767/2008** of 9 July 2008 laid down the VIS's purpose, functionalities and responsibilities and laid down the conditions and procedures for the exchange of visa data between Member States to facilitate the examination of visa applications and related decisions;
- **Regulation (EC) No 810/2009** of 13 July 2009 (the Visa Code) set out the rules on the registration of biometric identifiers in the VIS.

The VIS was also entrusted with the aim of contributing to internal security and combating terrorism. **Council Decision 2008/633/JHA** of 23 June 2008 consequently laid down the conditions under which Member States' designated authorities and Europol may obtain access to consult the VIS for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences.

The VIS is instrumental in order to:

- 1) improve the implementation of the common visa policy, consular cooperation and consultation between central authorities to prevent threats to internal security and 'visa shopping';
- 2) facilitate the fight against fraud and checks at external border crossing points and within the Member States' territory;

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<sup>1</sup> In this document, 'Member States' means Schengen Member States, i.e. EU Member States that are Schengen members, as well as the Schengen Associated countries.

- 3) assist in the identification and return of illegal immigrants;
- 4) facilitate the application of the Dublin Regulation<sup>2</sup>.

The VIS specifically contributes to safeguarding the Member States' internal security and combating terrorism<sup>3</sup> by improving how visa applications are assessed. This includes improving consultation between central authorities and improving the verification and identification of applicants at consulates and border crossing points. Safeguarding Member States' internal security and combating terrorism constitutes a general objective and basic criterion for the common visa policy. The VIS also helps to fight against illegal immigration<sup>4</sup> and benefits bona fide travellers by improving and facilitating the procedures for issuing visas and for checks.

The VIS was gradually rolled out in all Member States' consulates around the world between October 2011 and February 2016.

Around 16 million Schengen visas are issued every year by the 26 Member States and Schengen associated countries. By the end of March 2016 data on close to 23 million visa applications and 18.8 million fingerprints had been entered in the VIS.

The system has exceeded the threshold of 1 million operations per day and 100,000 operations per hour. It has a capacity of up to 450,000 operations per hour and can store and process 60 million pieces of visa application data.

## 1.2. Assessment and monitoring

The VIS legal framework provided for an evaluation of the implementation of the **VIS Regulation**<sup>5</sup> and of the **VIS founding Decision**<sup>6</sup>, as well as of the use of VIS by law enforcement authorities on the basis of the **VIS Law Enforcement Access (LEA) Decision**,<sup>7</sup> and the use of biometrics in the visa application procedure on the basis of the **Visa Code**<sup>8</sup>.

On this basis, and considering as well the overall principles and criteria for carrying an evaluation of EU policy instruments in the context of the Regulatory and Fitness (REFIT) programme, the Commission launched in 2015 the first evaluation of the system since its entry into operation (2011) and looked in particular at :

- the performance of the VIS as a system;

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<sup>2</sup> Regulation (EU) No 604/2013 replacing Regulation (EC) No 343/2003, OJ L 50 of 25.2.2003, p. 1.

<sup>3</sup> Cf. Council conclusions of 19.2.2004, point 1(g) of its Annex.

<sup>4</sup> Cf. Articles 5(1)(e) and 15 of the Schengen Convention.

<sup>5</sup> 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) OJUE L 218, 13.8.2008, p. 60.

<sup>6</sup> Council Decision No 512/2004 establishing the Visa Information System (VIS) OJUE L 213, 15.06.2004, p. 5.

<sup>7</sup> 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, OJUE L 218, 13.08.2008, p. 129.

<sup>8</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243, 15.9.2009, p. 1.

- how it has been implemented in practice;
- the extent to which it has reached its policy objectives;
- whether it is fit-for-purpose in terms of: **effectiveness, efficiency, relevance, coherence** and **added value** for the EU visa policy.

The report (and the evaluation that underpins it) also:

- assesses whether the system delivers on its objectives at reasonable cost;
- examines the results achieved in the light of the objectives;
- examines the Member States' implementation of the legal framework.

The evaluation was performed internally by the Commission. A number of different data collection tools were used to gather information from a wide range of stakeholders, which included:

- extensive documentary review;
- an EU survey sent to the Member States, to which 19 Member States replied<sup>9</sup>, and to the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA);
- feedback from eu-LISA Management Board and VIS Advisory Group meetings, the competent working groups in the Council (the Visa working party, Friends of VIS, VISION), Schengen evaluations of Member States, and the local Schengen cooperation between Member States' consulates throughout the world.

The opinions of third-country nationals and governments of countries under visa obligation were taken into account both via Member States's and Commission's experience with rolling out and applying VIS worldwide.

This report also draws on a study<sup>10</sup> carried out by the Joint Research Centre on fingerprint recognition for children.

While this evaluation was based on four years of functioning of the VIS, account was taken of the fact that the VIS worldwide rollout was gradual, which means, for example, that over 50 % of VIS volume of transactions comes from regions where VIS was deployed only 3-4 months before the end of the evaluation, thus only limited data and monitoring was available from those regions at the time of carrying out the evaluation. Although this can be considered a limiting factor, the available data and the evidence collected allowed drawing a number of conclusions as regards key aspects of the VIS and the evaluation questions.

In addition to presenting the main findings of the evaluation and the Commission's views, this Report also presents a number of recommendations for next steps.

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<sup>9</sup> Austria, Belgium, Czech Republic, Estonia, France, Germany, Greece, Iceland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Sweden, and Switzerland.

<sup>10</sup> JRC-IPSC 'Fingerprint Recognition for Children' (Report EUR 26193 EN).

## 2. MAIN FINDINGS OF THE EVALUATION

Overall, the findings of the evaluation point to the fact that the introduction of the VIS has led to 1) a simplification and facilitation of the visa application process by ensuring that data gathered by all Member States are stored and exchanged via a common system, 2) a reduction in the administrative burden of national administrations and 3) clear, smooth and effective procedures when dealing with processing visa applications, performing checks at external borders or in the territory, identifying third country nationals for migration or return purposes or examining asylum applications.

This overall assessment is based on the analysis of the evaluation criteria below.

### 2.1. Has the VIS been effective in reaching its objectives?

A substantial majority of contributing Member States<sup>11</sup> concurred that the **introduction of the VIS facilitated the visa application procedure** which was simplified by setting-up a common system to store and exchange data between Member States on applications and related decisions.

EU-LISA statistics show that the average time to complete an examination procedure from when a visa application was admitted to when a visa was issued was four days, with most Member States taking about five days to examine an application. This period is significantly lower than the legal limit of 15 working days.

Most contributing Member States<sup>12</sup> also agreed that **the introduction of the VIS facilitated the fight against visa fraud**, although the majority of them<sup>13</sup> considered that it had no impact on *preventing* applicants from attempting to bypass the criteria for determining which Member State was responsible for examining their visa application.

Frontex's 'Annual Risk Analysis 2016' shows that the introduction of VIS checks at borders in October 2011 led to an increase in detections of false visas at borders in the period immediately following (2012), and, in the longer run, constituted a deterrent to the use of false visas to enter the EU territory<sup>14</sup>.

Most responding Member States<sup>15</sup> considered that **the introduction of the VIS facilitated checks at external border crossing points and within the Member States' territory**.

According to eu-LISA reports based on data logs, showing that it currently takes an average of 1.36 seconds to perform a first line check using fingerprints and 0.31 seconds without fingerprints. A second line check takes an average of 13.78 seconds with fingerprints and 0.28 without.

The report on technical progress on the use of fingerprints at borders<sup>16</sup> found that the overall impact on the time taken to collect and verify fingerprints is on average 26 seconds at air

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<sup>11</sup> 14 out of the 19 Member States which have contributed.

<sup>12</sup> 17 Member States.

<sup>13</sup> 12 Member States.

<sup>14</sup> For details see section 6.1.3 *Facilitating the fight against fraud* in the accompanying CSWD.

<sup>15</sup> 14 Member States.

<sup>16</sup> Based on the input received from nine Member States.

borders and 44 seconds at sea borders. These data indicate a significant progress made in shortening the time spent on checks at external borders, compared to a situation before when this was done manually, as well as the increased reliability of these checks, thanks to biometrics.

A substantial majority of the responding Member States<sup>17</sup> agreed that the **introduction of the VIS helped them identify persons who do not, or no longer, fulfil the conditions for entry to, stay or residence** on the territory of the Member States, chiefly due to the ability to compare biometrics.

**The introduction of the VIS** is also considered by many responding Member States<sup>18</sup> as having **supported the application of the Dublin Regulation** by helping to determine which Member State was responsible for examining an asylum application in cases where a visa had been issued by a Member State to the asylum applicant. Statistics support the idea that the VIS is **well accepted by Member States as an instrument of proof in the Dublin procedure**: between October 2011 and November 2015, the VIS was used for Dublin-related purposes by 12 Schengen Member States in nearly 400 000 cases and by 15 Member States to examine nearly 1.38 million asylum cases.

For almost **half of the responding Member States** the introduction of the VIS had a **positive impact on the prevention of threats to the Member States' internal security**, while only two Member States consider this impact as limited. This perception is supported by the statistics which indicate a rather limited use of the VIS for internal security, partly due to the recent use of the VIS for this purpose<sup>19</sup>. The limited use can be both the cause as well as the effect of the perceived limited positive impact of the VIS on preventing threats to the internal security.

## **2.2. Has the VIS achieved its objectives in an efficient way?**

The cost of setting up the VIS was nearly EUR 151 million over six years (2005 to 2011). Additionally, Member States incurred costs ranging from EUR 1-2 million to EUR 30 million to set up their national systems, amounting to a total of approximately EUR 600 million<sup>20</sup>, including maintenance costs for the first years. Member States' costs depended on their consular network and the type of equipment used. Quantifying the costs incurred by the Member States to set up national systems is a complex matter due mainly to the way in which systems are organised at national level. Most often the national systems were not built from zero, rather existing systems were upgraded and adapted to enable them to connect with the VIS. Since the verification and identification of third-country nationals were shifted to the Central VIS system, the VIS helped enforce synergies at European level and limited costs at national level.

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<sup>17</sup> 15 Member States.

<sup>18</sup> 12 Member States.

<sup>19</sup> Decision 2008/633 became applicable only in September 2013 and by December 2015 most of the 16 Member States that had used the VIS for law enforcement purposes, had been doing so for a few months.

<sup>20</sup> For details see Section 6.2 'Efficiency' in the Commission staff working document and Section 3.5 of Annex 2.

With a Schengen visa fee set at EUR 60 per application and nearly 23 million applications currently stored in the VIS, over EUR 1 380 million were collected by Member States to process these applications. However, these revenues do not only cover the cost of setting up and running the VIS. Given the massive initial cost of the investment, the relatively low cost of subsequent maintenance, and even considering all other administrative costs incurred by the Member States when processing visas, the initial cost of setting up the system appears to have been largely amortised.

However, the **main benefits of the system are of societal value and unquantifiable:**

- it contributes to the enforcement of a common visa policy and consular cooperation and provides an easily available and secure means of consultation between central visa authorities;
- it makes it possible to identify any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States;
- it facilitates the application of criteria and mechanisms to determine which Member State is responsible for examining an asylum application and when examining the application for asylum itself;
- it contributes to preventing, detecting and investigating serious criminal offences.

### **2.3. Has the VIS been relevant in view of its objectives?**

The evaluation showed that the VIS addresses the needs, problems and issues for which the system was first set up.

This makes **VIS essential for the good functioning of the common visa policy and in supporting the common free movement area**. It has introduced increased **transparency into the visa process**, especially by linking applications, and has led to more **harmonised procedures** by incentivising Member States to seek out common practice when assessing applications.

The VIS has also made the **visa process and its end result more predictable for visa applicants**.

Furthermore, the VIS has proven to be an essential tool in the **detection of identity theft and visa shopping** through the use of biometrics. **The biometric check is considered the cornerstone of the common identification and verification procedure.**

While the evaluation identified areas for further improvement, these are mostly technical and do not imply reviewing the initial objectives of the VIS.

#### 2.4. Is the VIS coherent with other pieces of relevant EU legislation?

The evaluation showed a high level of consistency between the VIS and other EU policies, and that the consistency between the VIS and other EU home affairs policies is increasing.

There are four policy areas in particular with which the VIS is very coherent:

- **border and migration policy** — probably the most significant and positive impact. The VIS facilitated checks at external border crossing points and within the Member States' territory and helped identify people who do not, or no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States;
- **asylum policy** — the VIS supports the application of the Dublin Regulation by providing a clear and irrefutable means of proof as regards the visa criterion, as well as useful information necessary in the process of examining an asylum application for a person previously detected in the VIS;
- **return policy** — although use of the VIS in the return procedure has so far been rather limited, the recent trends indicate an increased need to use this instrument which provides the indisputable proof of identity necessary in a return procedure;
- **security policy** — for the time being, access to the VIS for law enforcement purposes on the basis of the VIS Decision remains quite fragmented across the Member States. However, the high level of satisfaction and real or expected benefits from such access suggest that the number of users and requests will increase in the future.

The VIS is one of the three main centralised information systems developed by the EU in the area of home affairs, together with:

- the **Schengen Information System (SIS)**, which provides a broad spectrum of alerts on persons and objects; and
- the **Eurodac** system, which contains the fingerprint data of asylum applicants and third-country nationals who have crossed the external borders irregularly.

These three systems are complementary in their tasks related to securing the external borders and supporting national authorities in fighting crime and terrorism.

It is also an important tool that helps asylum authorities to determine the Member State responsible for examining an asylum application and subsequently in the actual examination of applications.

The VIS is also coherent with the EU policies on **trade and tourism** as the evaluation did not find any significant impact of the introduction of the VIS on these fields, nor a decrease in tourism or business travel to the Member States.

#### 2.5. Does the VIS generate EU added value?

The evaluation has showed that VIS is an indispensable tool for the implementation of an effective and efficient common visa policy and is increasingly contributing to the security of

the EU external borders, to fight irregular migration and help in the fight against terrorism and other serious crimes, thereby generating further EU added value.

The role of the VIS in the current framework of EU-wide IT instruments for borders is increasing. The recent **proposal by the Commission on an Entry/Exit System (EES)**<sup>21</sup> **would also lead to significant amendments to the VIS Regulation**, notably by ensuring the interoperability between the two systems and changing the way in which checks against the VIS are performed at border crossing points. This would enable direct consultation between the two systems in both directions (EES to VIS and vice-versa) at border crossing points and in consulates.

A return to a state of affairs in which exclusively national systems are used to ensure the security of the external borders, fight visa and identity fraud, thus irregular migration, or assist in the fight against terrorism and other serious crimes is not an option at this point in time.

### **3. THE COMMISSION'S VIEWS ON THE FINDINGS OF THE EVALUATION**

In the context of this evaluation the Commission has identified a number of key areas in which any existing problem will need to be addressed in order to ensure that the VIS can better deliver on its main objectives.

#### **3.1. Data quality**

Data quality is at the top of the list of priority areas identified by the evaluation. Problems with data quality mostly stem from sub-optimal application of the legal provisions, although in a few cases the law insufficiently responds to the quality needs required for an efficient use of the system.

Quality problems have been found for both alphanumeric and biometric data. Typical problems include:

- confusing the various grounds for exemption from the obligation to provide fingerprints;
- confusion over the distinction between biometrics not being compulsory for legal reasons (such as the applicant being a head of state or government or a child below the age of 12) and the physical impossibility to provide fingerprints.

In the latter case, a further distinction should also be made between temporary and permanent impossibility.

As regards alphanumeric data, although the Member States have a clear legal obligation to insert all data from the visa application into the VIS, they are still not fully implementing this obligation. The introduction of the VIS Mail communication network and its organic link with

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<sup>21</sup> Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011, COM(2016) 194 final.

the VIS will mean that in future consultations through VIS Mail will not be possible if the available data has not been fully aligned with the requirements of any given consultation.

The importance of correctly linking the applications of the same person or of persons travelling in a group was repeatedly highlighted throughout the evaluation. An incorrect link could have serious consequences on the capacity to follow the history of a person's applications and thus undermines the purpose of registering the data in the VIS. It is therefore paramount that where erroneous links are found, they are immediately corrected. In future, Member States other than the one that created a link should be given the possibility to correct the mistake and alter an erroneous link.

### **3.2. Reporting for monitoring and statistics**

Finding informative and reliable statistics was one of the major hurdles encountered while gathering information for the evaluation and in the other processes which fed into this report.

Without hard quantitative evidence, the Commission would not be able to:

- properly monitor how the Member States are applying EU law (whether during the evaluation of a policy or in targeted processes such as the Schengen evaluation);
- justify policy developments.

The current VIS Regulation entrusts the task of producing statistics exclusively to the Member States. However, in a centralised system such as the VIS, having 26 different states produce and compile data in a disparate manner is inefficient and creates unnecessary administrative burden. In practice, most of these data are easily and immediately available from the VIS and can be easily compiled with a minimum of effort and anonymised for various statistical or testing purposes.

### **3.3. Use of the VIS when collecting the data**

While the evaluation found that the VIS significantly facilitated the fight against visa fraud, the system was not conceived to prevent fraud involving false documents/false passports presented *during* a visa application. Given that the obligation to check travellers' fingerprints makes it harder for fraudsters to cross the border using fraudulent visa stickers, a possible knock-on effect could be a shift from the use of fraudulent visa stickers towards the use of visas obtained under false pretences in consulates (at the time of applying for a visa). In turn this would lead to an increase in the likelihood of fraud involving other types of documents (e.g. travel documents). To prevent this, consulates should verify the applicant's identity before taking the fingerprints, making appropriate use of existing detection measures.

The Visa Code provides that for 59 months following the recording of fingerprints for an application, those fingerprints should be copied when subsequent applications are made. This means that the person does not need to appear in person again or give fingerprints again. However, the evaluation showed that this is rarely the case in practice. Member States often repeat the taking of fingerprints at each application either due to doubts over the person's

identity, or because the person does not remember whether fingerprints have been previously taken or when this was done.

### **3.4. Use of the VIS at external borders**

The VIS has a very positive impact on the reinforcement and the facilitation of controls at external borders. In particular, the checking of fingerprints in combination with the visa number provides an important contribution to the fight against visa fraud.

Although verification against the VIS with the visa number in combination with the fingerprints has been mandatory since October 2011, the implementation of this obligation remains unsatisfactory and varies greatly between Member States.

It may be expected that the gradual disappearance of visas issued without collecting fingerprints (i.e. visas issued before the roll-out in a particular region) will lead to an increase in the checks against the VIS at external borders and especially of checks that use a combination of the visa number and fingerprints.

### **3.5. Use of the data for asylum purposes**

The VIS is an important tool for determining the Member State responsible for examining asylum applications. It provides information on whether the asylum applicant has been granted a visa and on the identity of the asylum applicant in a fast and reliable way. It therefore provides evidence for determining the Member State responsible and facilitates the ‘take charge’ based on the ‘visa’ criterion under the Dublin Regulation.

As confirmed by Member States that made use of the VIS for asylum purposes, the VIS can be used not only to support the application of the Dublin Regulation, but also when examining asylum applications, in particular to identify applicants and determine their credibility. However, the evaluation showed that only few Member States use the VIS for asylum purposes<sup>22</sup>.

### **3.6. Use of the data for law enforcement purposes**

Access to VIS for law enforcement purposes was introduced very recently and therefore the results of the evaluation remain fragmentary and inconclusive. Only preliminary lessons can be drawn from data provided by the Member States. There is potential for increased use of VIS in the law enforcement context given that the VIS is clearly seen overall as an effective and useful instrument supporting the prevention, detection and investigation of terrorist offences and other serious criminal offences. VIS may provide valuable information that can help identify suspects or victims and facilitate criminal investigations.

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<sup>22</sup> The VIS was used for asylum purposes for the Dublin procedure by 12 Schengen Member States and for examining an asylum application by 15 Member States, though the vast majority of the searches were carried out by four Member States only. For further details see Section 6.1.6 of the SWD and Section 1.6 of Annex 2 of the SWD.

However the use of VIS in law enforcement is still very fragmented across the Member States. In particular, the possibility for fingerprint searches is not yet used. The evaluation did not identify specific reasons for the low use of the access to VIS for law enforcement purposes. However, the current shortcomings may be explained by the relative novelty of the system, lack of awareness among potential users and technical and administrative difficulties.

### **3.7. Data protection in the VIS**

The rights of data subjects are an important part of data protection law. Ensuring that data subjects can access, rectify and erase data held about them increases the transparency of data processing for them, helps to uncover unlawful processing and increases data quality for lawful processing. These considerations are all the more relevant in a field such as visa applications, where compliance with the legal framework is especially important given the adverse consequences unlawful processing might have here.

A notable phenomenon identified by the evaluation was the absence, or very low number, of requests by data subjects to exercise their rights to access, correct or delete their personal data stored in the VIS. The finding could be explained by Member States' good performance on the protection of personal data. However, it could also in part be due to data subjects being unaware of their data protection rights and not knowing how to exercise them (e.g. to whom data subjects should address their requests).

Inspections on the spot by the European data Protection Supervisor to monitor the lawfulness of the processing of personal data and security audits of the VIS central system have not led to identify data protection issues. In its almost three years of operation, eu-LISA has not received any complaint related to data protection.

## **4. NEXT STEPS**

### **4.1. Short-/medium-term measures**

#### *Quality issues*

In order to improve data quality at an early stage of the visa application procedure, indicators on data quality defects could be introduced and used to check applications when they are submitted. For instance, a short list of indicators could be established for **each application highlighting the field deficiency** (e.g. a date, a name, a wrong data, etc.), **alerting any future user to the fact that a potential quality defect is present**.

Appropriate measures should also be considered to ensure that prior consultations are not put at risk because of missing information in the VIS. To solve this issue, **the VIS could be programmed to refuse to launch a request for prior consultation until all appropriate information required in Article 9 of the VIS Regulation is properly filled in the system**. Additionally, the system should allow a quick and unambiguous identification of persons whose fingerprints are missing from the system and the reason thereof in order to avoid prolonged searches at border crossing points.

As regards fingerprints, **the system needs to be technically adjusted so that it can better distinguish between cases where fingerprints are not required for legal reasons and cases where there is a factual reason why they cannot be provided.** This will make the system better able to provide unambiguous data that can be used to check that consulates are properly applying the obligations on fingerprints and identify cases in which a person was refused a visa because there was a factual reason why he or she could not provide fingerprints.

To address reported hindrances in collecting biometrics, in particular those affecting the quality of facial images, and to allow in the future combined searches using facial image, alternative standards could be put in place, such as **taking photographs directly when applying for a visa.**

Centralised monitoring of the data quality and the identification and implementation of common solutions thereto would ensure a more efficient response to these issues. For this reason, in the future, eu-LISA should be entrusted a role in this respect, including the task of producing data quality reports.

#### *Centralised technical solutions for prior consultation and representation*

A centralised technical solution to be applied uniformly by all Member States concerned by a prior consultation could be envisaged, possibly in the form of a **matrix of identification of the recipient Member States.** It would create synergies and make it easier for Member States to maintain the IT systems concerned, as well as ensure that the relevant data are stored in the VIS prior to launching a consultation.

A **centralised technical solution to identify recipient Member States concerned by an *ex post* notification** could also be considered. In this way the relevant data would be stored in the system before a notification is sent.

Finally, a **centralised technical solution in the VIS could also be considered for the matrix of Member States' consular representation.** This would benefit Member States by removing the need to include technical definitions in the representation agreements and by making it overall easier to conclude new agreements. It would also be beneficial for applicants because it would remove the uncertainty over the way the procedure is conducted in the case of representation.

#### *Integration of VIS Mail into the VIS*

In order to make exchanges between the central system and the national systems more coherent, the **VIS Mail mechanism for consultations should be integrated into the VIS infrastructure.** Such a measure would also make it easier for the Member States to perform their tasks, because there would be fewer systems to manage and maintain at national level. This measure could be accompanied by an examination of the necessary

messages/notifications (e.g. consular cooperation, VLTV<sup>23</sup> issue notifications) to be run through the VIS Mail.

#### *Multiple fingerprint collection within 59 months*

A possible solution to address the current issue with the 59-month rule on copying fingerprints could be to have each consulate issue a **receipt certifying that it collected the fingerprints of a particular applicant on a particular date**. The person concerned would be instructed to present this receipt when applying for a visa again within the next 59 months.

#### *Access to the VIS for law enforcement purposes*

Given the recent introduction of access to the VIS for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences, further information and evidence are necessary to identify why the system has so far been consulted infrequently for this purpose.

In future, law enforcement authorities could be given the **possibility to search the VIS using latent fingerprints and photographs**. This would make such searches more useful and efficient.

#### *Use of the VIS on a systematic basis at borders*

Member State authorities should be encouraged to comply with the existing obligation to perform **mandatory checks against the VIS using the visa number in combination with the visa holder's fingerprints**. Practical information on visa checks at external borders is available in the Practical Handbook for border guards and was updated in line with the full roll-out of the system. In addition, the planned **increased interoperability between the information systems available at the external borders** may facilitate and speed up the required checks. Since delays in border crossings are one of the main obstacles to systematic checks against the VIS, this increased operability and the development of the entry-exit system should have a positive impact.

#### *Use of the VIS to identify people apprehended in connection with the irregular crossing of an external border or found to be illegally staying in a Member State*

Member States should consider introducing **systematic checks of irregular migrants without valid travel documents within the territory** so that they can be identified for the purpose of return. Although third countries often do not consider data collected from the VIS as sufficient evidence for issuing travel documents for the purpose of return, the system can still be useful for establishing the nationality and in subsequent investigations. Furthermore, most recent EU readmission agreements qualify the results of searches in the VIS as proof of nationality.

The VIS is currently used for return purposes only to a very limited extent. However, the VIS could play a much more significant role if given the **possibility to store a scanned data page**

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<sup>23</sup> Visas with limited territorial validity.

**of the visa applicant's passport.** Providing Member States with the possibility to access a copy of the passport of an irregular migrant could improve the chances of effective return and accelerate the procedure. This would also enable more returns to be carried out on the basis of the EU travel document for return purposes<sup>24</sup> combined with a copy of the passport.

#### *Systematic use of the VIS for asylum applications*

The potential of the VIS for asylum purposes should be exploited by all Member States in a more systematic manner. **All Member States should be encouraged to use the VIS for asylum purposes** to:

- determine the Member State responsible for examining an asylum application in order to ensure a more effective and uniform practice; and
- when examining the substance of the asylum application in order to help establish the applicant's identity and credibility.

As regards the Dublin procedure, the proposal for a recast of the Dublin III Regulation<sup>25</sup> provides for an obligation for Member States to search in the VIS. In future, asylum authorities should be allowed access to check the purpose of travel, as part of the credibility assessment.

#### *Data protection*

National data protection authorities should be invited to carry out **quality controls** on the information provided to data subjects by diplomatic missions, consular posts and external service providers, and to carry out more systematic checks, including audits of the national VIS.

#### *Increased search efficiency to combat fraud*

The VIS has significantly improved the fight against identity fraud in the visa procedure and at borders, essentially by using biometrics. **The scope of second line searches at borders** for travellers for whom it is physically impossible to check with fingerprints (or for whom fingerprinting was physically impossible at the time of applying for a visa) **could be broadened** to allow inexact results. Such results would provide more information to border guards, enabling them to establish whether any suspicion of fraud exists.

#### *Statistics based on VIS data*

On the production of statistics, **entrusting eu-LISA with the task of generating reports** on behalf of Member States seems the appropriate step forward. Similar to what has been proposed for the EES, eu-LISA could be required to establish a central repository of data and make it available on a regular basis to the Commission, Member States, and EU agencies (such as Frontex or Europol). For this purpose, eu-LISA should be entrusted with keeping

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<sup>24</sup> Proposal for a Regulation of the European Parliament and of the Council on a European travel document for the return of illegally staying third-country nationals, COM(2015) 668 final, 15.12.2015.

<sup>25</sup> COM(2016) 270 final.

also the records of data processing operations carried out in the application of Decision 2008/633/JHA. In the longer run it should be made possible for these data to be combined with those of other databases (e.g. EES) in order to generate strategic reporting on migration trends. Member States could then have access to:

- technical statistics (creation of visa application files, searches, border authentications per hour, day, month, year etc.);
- figures about the VIS performance against the objectives (both overall data and per Member State);
- business intelligence and analytics on the VIS data (possibility of a separate repository similar to the one in EES), considering all Member States' visa activity. In this respect, the task of producing visa statistics could be transferred from the Commission (task allocated to it in the Visa Code) to eu-LISA.

In addition, **the report on the technical functioning of the VIS currently produced by eu-LISA every two years could be made annual.** This would improve the monitoring of the system and align the relevant provisions with those of similar instruments (SIS, Eurodac).

A revised VIS Regulation should enable the Commission to request that eu-LISA provide statistics on specific aspects of the system's implementation or on Member States' implementation of various VIS-related policy aspects, in particular data necessary for the Schengen evaluations of the Member States.

#### **4.2. Other possible future developments of the VIS**

In addition to learning the lessons from the past application of the VIS legal framework, attention must also be directed towards VIS's potential future uses. In a world ever more interconnected and with the complex inter-linkages of the various policy areas, the VIS offers multiple unquantifiable benefits in border security. These include **potential easy and low cost interconnectivity with:**

- **existing EU systems (SIS, Eurodac);**
- **upcoming EU systems (EES);**
- **databases (Stolen and Lost Travel Documents).**

Following the Communication on *Stronger and Smarter Information Systems for Borders and Security*<sup>26</sup> ('Smart Borders' Communication) adopted on 6 April 2016, the Commission set up a **High Level Expert Group on Information Systems and Interoperability**, tasked with addressing the legal, technical and operational aspects of the different options to achieve interoperability of the SIS, VIS and Eurodac. A final report with recommendations is expected by mid-2017, which may result in legal amendments to the VIS in order to achieve interoperability with other systems.

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<sup>26</sup> COM(2016) 205 final.

Furthermore, a legislative proposal to establish an **EU Travel Information and Authorisation System** (ETIAS) will be presented before the end of the year, along with new tasks for eu-LISA, including developing a central monitoring capacity for data quality for all systems.

In progressing and implementing further technical and operational interoperability and new functions the fundamental right to protection of personal data as recognised in Article 8 of the Charter of Fundamental Rights, and in particular the purpose limitation principle deriving from that right<sup>27</sup> must be taken into account.

In exploring interoperability of large scale systems special consideration should be given to data protection by design - requirements as mentioned in Article 25 of the new General Data Protection Regulation 2016/679 and Article 20 of the Data Protection Police Directive 2016/680.

Additionally, the eu-LISA evaluation conducted in 2015<sup>28</sup> found that to ensure full coherence of the operational management of the VIS, Commission's responsibilities regarding the communication infrastructure should be transferred to eu-LISA. Some of these initiatives and findings will require amendments to the VIS legal instruments and other legal acts.

The evaluation highlighted some interest from Member States in also having information on national **long-stay visas, including biometrics registered in the VIS**.

The possibility to **adapt the configuration of the central system** to better respond to the need to rapidly and efficiently adapt to availability needs in periods of disruption should also be analysed.

In order to allow eu-LISA to test the various VIS functions more realistic testing solutions in line with the applicable data protection framework should be facilitated for eu-LISA.

Finally, as indicated by the study on the reliability of fingerprinting of children below the age of 12<sup>29</sup>, and taking into account the 2016 Commission Report on human trafficking<sup>30</sup>, the

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<sup>27</sup> Article 4 (1) b) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Article 6 (1) b) of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, later replaced by Article 5 (1) b) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

Article 3 of the Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, later replaced by Article 4 (1) b) of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131.

<sup>28</sup> "Independent external evaluation of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice - eu-LISA", ISBN: 978-92-79-58236-3, Catalogue number, DR-01-16-464-EN-N.

<sup>29</sup> See Report EUR 26193 EN, 'Fingerprint Recognition for Children', carried out by the JRC.

**possibility to reduce the age limit for collecting fingerprints of children to 6 years of age should be further explored, taking into account the best interests of the child and** in order to assess in particular its potential to assist in identifying victims of trafficking in human beings and detecting traffickers.

#### **4.3. Possible legislative revisions**

Some of the shortcomings identified in the evaluation of the VIS legal framework and some of the recommendations for improvement can only be addressed through a revision of the VIS legal base. This would include, for example:

- transferring the responsibility for producing statistics to eu-LISA;
- interconnectivity with other systems;
- improved data quality rules and the production of data quality reports;
- scrapping obsolete provisions of the current law (e.g. on the roll-out, the setup and transition to VIS Mail or various transition periods).

Where a legislative revision is envisaged and where appropriate, the Commission will conduct an impact assessment that will analyse and assess the likely impacts of the different policy options for such a proposal.

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<sup>30</sup> Commission staff working document accompanying the document *Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings*, SWD(2016) 159 final.